

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ALASKA AT ANCHORAGE

3 UNITED STATES OF AMERICA for the
4 use of NORTH STAR TERMINAL &
5 STEVEDORE COMPANY, d/b/a NORTHERN
6 STEVEDORING & HANDLING, and NORTH
7 STAR TERMINAL & STEVEDORE COMPANY,
8 d/b/a Northern Stevedoring &
9 Handling, on its own behalf,

10 Plaintiffs,

11 and

12 UNITED STATES OF AMERICA for the
13 use of SHORESIDE PETROLEUM, INC.,
14 d/b/a Marathon Fuel Service, and
15 SHORE PETROLEUM, INC., d/b/a
16 Marathon Fuel Service, on its own
17 behalf,

18 Intervening Plaintiffs,

19 and

20 METCO, INC.,

21 Intervening Plaintiff,

22 vs.

23 NUGGET CONSTRUCTION, INC.; SPENCER
24 ROCK PRODUCTS, INC.; UNITED
25 STATES FIDELITY AND GUARANTY
COMPANY; and ROBERT A. LAPORE,

 Defendants.

No. A98-009 CIV (HRH)

DEPOSITION OF JEFFREY "JEFF" BENTZ
Pages 1 - 221 (inclusive)

November 21, 2005
8:33 a.m.

| Page 2 | Page 4 |
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| <p>1 2 3 Taken at: 4 The Law Offices of Oles Morrison Rinker & Baker 745 West 4th Avenue, Suite 502 5 Anchorage, Alaska 6 7 8 9 10 Reported by: Leslie J. Knisley Shorthand Reporter 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> | <p>1 I-N-D-E-X 2 JEFFREY "JEFF" BENTZ NOVEMBER 21, 2005 3 EXAMINATION 4 PAGE 5 BY MS. HO 6 BY MR. VIERGUTZ 209 6 7 NUMBER EXHIBITS PAGE 8 1 Renote of Deposition, 9 6 pages 9 2 North Star's Second 35 Supplemental Disclosures, 7 pages 10 3 North Star's Responses to 55 Defendant's First Set of Discovery Requests, 17 pages 11 12 13 4 Copy of four business cards, 61 1 page 14 5 North Star's Amended Complaint, 70 26 pages 15 16 6 Credit application and various 71 documents, 9 pages 17 7 Affidavit of Jack Goodwill, 89 25 pages 18 19 8 Current rates and invoices, 93 9 pages 20 9 Daily notes of operations, 110 13 pages 21 22 10 Invoices and timecards, 115 34 pages 23 24 25</p> |
| Page 3 | Page 5 |
| <p>1 A-P-P-E-A-R-A-N-C-E-S 2 3 For Plaintiffs: 4 MR. MICHAEL W. SEWRIGHT Burr, Pease & Kurtz, PC 810 N Street 5 Anchorage, AK 99501 (907) 276-6100 6 7 For Shoreside Petroleum: 8 MR. STEVEN J. SHAMBUREK Law Office of Steven J. Shamburek 425 G Street, Suite 630 9 Anchorage, AK 99501 (907) 250-0044 10 11 For Nugget Construction, Inc.: 12 MS. GLORIA Y. HO MR. TRAEGER MACHETANZ Oles Morrison Rinker & Baker, PC 13 745 West 4th Avenue, Suite 502 Anchorage, AK 99501-2136 (907) 258-0106 14 15 For USF&G: 16 MR. HERBERT A. VIERGUTZ Barokas Martin & Tomlinson 1029 West 3rd Avenue, Suite 280 17 Anchorage, AK 99501 (907) 276-8010 18 19 Also Present: 20 MR. JOHN SMITHSON, Nugget Construction MR. DOUG LECHNER, Metco, Inc. 21 22 Reported by: 23 LESLIE J. KNISLEY Shorthand Reporter 24 25</p> | <p>1 I-N-D-E-X, continued 2 11 Material Contract, 4 pages 143 3 12 Support agreement, 1 page 145 4 13 Bill of sale, 1 page 170 5 14 Letter to Army Corps of 185 Engineers, 8/4/97, 2 pages 6 7 15 Copies of two business cards, 188 1 page 8 16 Letter from U.S. Army Corps of 194 Engineers, 8/21/97, 1 page 9 10 17 Letter to U.S. Army Corps of 196 Engineers, 8/25/97, 3 pages 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> |

2 (Pages 2 to 5)

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| <p style="text-align: right;">Page 6</p> <p>1 PROCEEDINGS</p> <p>2 JEFFREY "JEFF" BENTZ,</p> <p>3 was solemnly sworn by the Notary Public to tell</p> <p>4 the truth, the whole truth, and nothing but the</p> <p>5 truth, testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MS. HO:</p> <p>8 Q Good morning, Mr. Bentz.</p> <p>9 A Good morning.</p> <p>10 Q How are you?</p> <p>11 A Pretty good.</p> <p>12 Q My name is Gloria Ho, and I represent</p> <p>13 Nugget Construction Company and United States</p> <p>14 Fidelity and Guaranty Company in this case.</p> <p>15 Today I'm here to take your deposition.</p> <p>16 You have just been administered an oath</p> <p>17 to tell the truth, and that is the same oath that</p> <p>18 you would be given if you were testifying in a</p> <p>19 court of law.</p> <p>20 Do you understand that, sir?</p> <p>21 A Yes.</p> <p>22 Q And, essentially, the oath that you</p> <p>23 have just taken and the testimony that you'll be</p> <p>24 providing today is as if you were testifying</p> <p>25 before a judge or a jury -- Court or jury.</p> | <p style="text-align: right;">Page 8</p> <p>1 let us know. I understand that you are on some</p> <p>2 medications; is that correct?</p> <p>3 A Yes.</p> <p>4 Q Have you taken any medication in the</p> <p>5 past 24 hours?</p> <p>6 A Yes.</p> <p>7 Q Do you think these medications would</p> <p>8 impair your ability to testify today?</p> <p>9 A No.</p> <p>10 Q Have you taken any alcoholic beverages</p> <p>11 in the last 24 hours?</p> <p>12 A No.</p> <p>13 Q Great. Now, you must answer my</p> <p>14 questions with a verbal "yes" or "no," not with</p> <p>15 gestures, otherwise the court reporter cannot</p> <p>16 take that down. You understand that, correct?</p> <p>17 A Yes.</p> <p>18 Q Thank you. If you feel that you need</p> <p>19 to review a document, please do so. I may or may</p> <p>20 not show you, depending on the circumstances.</p> <p>21 Is there any other reason that you can</p> <p>22 think of today as to why you would not be able to</p> <p>23 give testimony?</p> <p>24 A No.</p> <p>25 Q Thank you, Mr. Bentz. Now, today I</p> |
| <p style="text-align: right;">Page 7</p> <p>1 Do you understand that, sir?</p> <p>2 A Yes.</p> <p>3 Q Have you ever been in a deposition</p> <p>4 before?</p> <p>5 A Yes.</p> <p>6 Q So you do understand the procedures?</p> <p>7 A Yes.</p> <p>8 Q And if I ask a question which you don't</p> <p>9 understand or you're unclear about, you will tell</p> <p>10 me so that I can rephrase that question for you,</p> <p>11 correct?</p> <p>12 A Yes.</p> <p>13 Q Thank you, sir. Now, your attorney may</p> <p>14 from time to time make objections, and if he does</p> <p>15 so, unless he specifies you not to answer, would</p> <p>16 you please answer my question?</p> <p>17 A Yes.</p> <p>18 Q I appreciate that. Today we are</p> <p>19 entitled to your best recollection of the events.</p> <p>20 As you know, this is a very long litigation, so</p> <p>21 try your best today to provide accurate and</p> <p>22 honest answers. I appreciate that.</p> <p>23 Would you do so?</p> <p>24 A Yes.</p> <p>25 Q If you do need to take a recess, please</p> | <p style="text-align: right;">Page 9</p> <p>1 will first introduce Exhibit No. 1.</p> <p>2 (Exhibit 1 marked.)</p> <p>3 BY MS. HO:</p> <p>4 Q Would you please take a look at this</p> <p>5 document? Would you please take a minute or so</p> <p>6 to look through the document?</p> <p>7 Do you recognize it, Mr. Bentz?</p> <p>8 A Well, I'm not sure. Give me a moment</p> <p>9 to read it.</p> <p>10 Q Okay. Sure.</p> <p>11 MS. HO: While we do that, would you</p> <p>12 like to go around the room and tell us who you</p> <p>13 are so we can make your presence known today?</p> <p>14 MR. SEWRIGHT: Are you asking us to</p> <p>15 identify ourselves for the record for the court</p> <p>16 reporter?</p> <p>17 MS. HO: Yes. Please do so.</p> <p>18 MR. SEWRIGHT: Mike Sewright of Burr,</p> <p>19 Pease and Kurtz representing North Star and its</p> <p>20 designee, Jeff Bentz.</p> <p>21 MR. SHAMBUREK: Steve Shamburek</p> <p>22 representing Shoreside Petroleum, Inc. and Metco,</p> <p>23 Inc., and I'm here with Doug Lechner with</p> <p>24 Shoreside Petroleum.</p> <p>25 MR. VIERGUTZ: Herb Viergutz, USF&G,</p> |

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| <p style="text-align: right;">Page 10</p> <p>1 with Barokas, Martin and Tomlinson. 2 MR. SMITHSON: John Smithson with 3 Nugget Construction. 4 BY MS. HO: 5 Q Mr. Bentz, have you had a chance to 6 look through the document? 7 A Yes. 8 Q And do you recognize what it is? 9 A I believe so. 10 Q Okay. And for the record, this is 11 Nugget Construction and USF&G's Second Renote 12 of Taking a 30(b)(6) Deposition to North Star. 13 So as you look through the document and 14 as you sit here today, do you appear today 15 consenting to be the corporate designee for North 16 Star? 17 A Yes. 18 Q And are you also appearing today in 19 your personal capacity? To the extent that you 20 have -- 21 MR. SEWRIGHT: Counsel -- 22 Q -- any personal knowledge of the events 23 or the questions that I'm asking, will you be 24 answering on that basis or on behalf of the whole 25 company? I just want to clarify that.</p> | <p style="text-align: right;">Page 12</p> <p>1 Are you prepared to testify on those 2 topics today? 3 A I'm here to testify on anything that I 4 have any knowledge of. 5 Q Okay. I appreciate that, Mr. Bentz. 6 Now, you understand that as a designee 7 of North Star, that you have an obligation to 8 give a response that would be binding on North 9 Star. 10 Do you understand that, sir? 11 MR. SEWRIGHT: Counsel, you're asking 12 him for a legal conclusion. Please don't get 13 into that. 14 MS. HO: I'm not getting into that. 15 I'm just asking if he has an understanding. 16 MR. SEWRIGHT: Objection to the form of 17 the question. 18 MS. HO: That's noted. 19 A Again, I'm here to testify on anything 20 that I have any knowledge about. 21 BY MS. HO: 22 Q Thank you. Outside of your discussions 23 with counsel, what did you do to prepare for your 24 testimony today? 25 A Reams and reams of binders. I didn't</p> |
| <p style="text-align: right;">Page 11</p> <p>1 MR. SEWRIGHT: Counsel, he's here as a 2 designee for the company. To the extent he has 3 personal knowledge, he'll also testify to that, 4 but... 5 MS. HO: That's fine. I just wanted to 6 clarify that. 7 Q All right. Now, are you ready and able 8 to testify to the list of examination topics that 9 are in this deposition notice? 10 A Which are? 11 Q Which are, if you go to No. 1 on Page 12 3, essentially the allegations in North Star's 13 Amended Complaint dated August 31st, 2005 against 14 Nugget Construction and USF&G. 15 A Uh-huh. 16 Q Paragraph No. 2, basically to the 17 topics in North Star's 26(a) initial disclosures 18 and subsequent supplemental disclosures. 19 Are you prepared to testify on those 20 today? 21 A Yes. 22 Q Okay. And then paragraph No. 3, the 23 topics referenced in Nugget's and USF&G's first 24 set of discovery requests that were propounded to 25 North Star on or about October 12, 2005.</p> | <p style="text-align: right;">Page 13</p> <p>1 go through all the binders. I looked at some 2 pictures that Mike showed me on Friday. I've 3 reviewed our document stating what our position 4 is. 5 Q Your document; which document are you 6 referring to? 7 A There's so many documents, I don't 8 know. But, you know, I know the basic facts of 9 the case and from what I can recall, and that's 10 all I'm here to testify on today. 11 Q Okay. Now, who else within North Star 12 would have knowledge of these topics? 13 A I believe that's all in our list -- I 14 think you have a list. I've read somewhere the 15 list of names of people that might have 16 knowledge. That's -- 17 Q I'm specifically asking about people 18 within your company, North Star. 19 A That would have knowledge about this? 20 Q Uh-huh. 21 MR. SEWRIGHT: Presently employed by 22 North Star? 23 MS. HO: Presently employed. 24 A Pretty much just myself. 25 BY MS. HO:</p> |

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| <p style="text-align: right;">Page 14</p> <p>1 Q Just yourself, okay.</p> <p>2 Then, let's talk about your company</p> <p>3 today. The first thing is: Are North Star</p> <p>4 Terminal and Stevedoring Company and Northern</p> <p>5 Stevedoring and Handling two different companies?</p> <p>6 A They were at the time that this</p> <p>7 incident took place.</p> <p>8 Q Okay. Which is back in what year, to</p> <p>9 your best recollection?</p> <p>10 A '97.</p> <p>11 Q 1997. And what about currently?</p> <p>12 A Currently, it's only North Star</p> <p>13 Terminal and Stevedoring Company, LLC.</p> <p>14 Q And where is the principle place of</p> <p>15 business for the LLC?</p> <p>16 A Our headquarters is in Anchorage.</p> <p>17 Q In Anchorage. What is the current</p> <p>18 business address?</p> <p>19 A The mailing address is P.O. Box 102019,</p> <p>20 Anchorage, Alaska.</p> <p>21 Q And do you have a telephone number for</p> <p>22 the business, sir?</p> <p>23 A 907-272-7537.</p> <p>24 Q Okay. And who are the current</p> <p>25 officers, directors, shareholders, or owners of</p> | <p style="text-align: right;">Page 16</p> <p>1 A Correct.</p> <p>2 Q Okay. And then --</p> <p>3 MR. SEWRIGHT: Object to the form of</p> <p>4 the question. I think you, unless I</p> <p>5 misunderstood, I think you reversed the order</p> <p>6 there.</p> <p>7 A I think you might have, also.</p> <p>8 BY MS. HO:</p> <p>9 Q Okay. Then, why don't you correct me.</p> <p>10 A The parent company in '97 was North</p> <p>11 Star.</p> <p>12 Q Okay. The parent company in 1997 was</p> <p>13 North Star.</p> <p>14 A Yes.</p> <p>15 Q And as of today, why don't you identify</p> <p>16 the full complete name of the company.</p> <p>17 A I already did. It's North Star</p> <p>18 Terminal and Stevedore Company, LLC.</p> <p>19 Q And that is the entity --</p> <p>20 A That's the only entity today.</p> <p>21 Q Okay. That's the only entity today</p> <p>22 that's bringing this lawsuit against my clients,</p> <p>23 Nugget and USF&G, correct?</p> <p>24 MR. SEWRIGHT: Counsel, object to the</p> <p>25 form of the question; calling for legal</p> |
| <p style="text-align: right;">Page 15</p> <p>1 North Star?</p> <p>2 A Of the LLC, there's two ownership</p> <p>3 members.</p> <p>4 Q Would you please identify them?</p> <p>5 A One is Southeast Stevedoring</p> <p>6 Corporation and the other one is NSTS Holdings.</p> <p>7 Q Back in 1997 who were the shareholders,</p> <p>8 officers, or directors of North Star? At that</p> <p>9 time there were two companies, sir. Do you</p> <p>10 recall --</p> <p>11 A In '97 they were basically the same,</p> <p>12 the shareholders were basically the Redlich</p> <p>13 family.</p> <p>14 Q Okay. And are they in Anchorage,</p> <p>15 Alaska?</p> <p>16 A No, they reside in California. Did at</p> <p>17 that time.</p> <p>18 Q I see. Do you have any contact with</p> <p>19 them whatsoever?</p> <p>20 A Not very frequently. They no longer</p> <p>21 have an ownership in the company.</p> <p>22 Q Okay. Now, can we establish for the</p> <p>23 record that North Star Terminal and Stevedoring</p> <p>24 Company is a d/b/a of Northern Stevedoring and</p> <p>25 Handling?</p> | <p style="text-align: right;">Page 17</p> <p>1 conclusion. These events go back to '97.</p> <p>2 MS. HO: Well, I just want to make sure</p> <p>3 that we know which company is suing my clients,</p> <p>4 because at the time that --</p> <p>5 THE WITNESS: Isn't it documented?</p> <p>6 MS. HO: It is --</p> <p>7 MR. SEWRIGHT: Same objection.</p> <p>8 MS. HO: -- but I just wanted to make</p> <p>9 sure. And you're here today as the corporate</p> <p>10 representative, so we will have the best</p> <p>11 knowledge of this, sir.</p> <p>12 BY MS. HO:</p> <p>13 Q So, again, which company today is suing</p> <p>14 my clients?</p> <p>15 MR. SEWRIGHT: Same objection.</p> <p>16 BY MS. HO:</p> <p>17 Q Mr. Bentz, would you please answer the</p> <p>18 question?</p> <p>19 A North Star Terminal and Stevedore</p> <p>20 Company is the active LLC, is the active company</p> <p>21 name.</p> <p>22 Q And I will refer to them as North Star,</p> <p>23 unless you --</p> <p>24 A That's fine. North Star is fine.</p> <p>25 Q That sounds good. Thank you.</p> |

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1 Now, are you a current officer,
2 director, shareholder, or owner of North Star?
3 A I'm the president and CEO of North
4 Star.
5 Q And how long have you been the
6 president and CEO?
7 A Since 1995.
8 Q 1995. How many employees are currently
9 employed with North Star?
10 A We have a variety of permanent,
11 full-time employees. Most of our employees come
12 out of dispatch halls from various labor
13 organizations, union halls, so it's a difficult
14 question to answer. It's different every day.
15 Q Different every day. So why don't you
16 explain to us what dispatch hall you're referring
17 to and how the employees are actually hired
18 within North Star.
19 A We have some permanent, full-time
20 employees that reside with the company and report
21 a 40-hour week. We have some that are daily
22 dispatched from a union hall, like any other
23 union hall, where you call and arrange a dispatch
24 or send in a written request and get a laborer
25 for the day.

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1 Q Okay. And of these two categories of
2 employees, the second type, the unionized one, do
3 you have a list of current names and addresses
4 for them?
5 A At any particular given time. Some of
6 those are registered union members, and some of
7 them are casual union members that come and go.
8 Q So at any point in time when they
9 worked for North Star, you actually go out and
10 obtain their Social Security number, address,
11 telephone number, contact information, so on and
12 so forth; is that correct?
13 A All the necessary information that
14 we're legally obligated to have.
15 Q Thank you. And as for your current
16 employees that have the 40-hour workweek, you
17 also have their current information so that they
18 can legally work within your company; is that
19 correct?
20 A Correct.
21 Q Then, how would you classify the number
22 of employees, if you collectively put these two
23 types of workers?
24 A It changes from any particular given
25 year.

Page 20

1 Q So, say, back in 1996, per se --
2 A I couldn't tell you how many man-hours
3 we had in 1996.
4 Q In 1997?
5 A I couldn't tell you right now how many
6 hours we had in 1997.
7 Q Okay. And what about today?
8 A I couldn't tell you how many hours
9 exactly we have through today.
10 Q Well, who would know within your
11 company?
12 A I could make a phone call and find out.
13 I do not have the number of man-hours presently
14 through today's date.
15 Q And who would you call?
16 A I would call my accounting department
17 to find out.
18 Q Is that accounting department within
19 North Star?
20 A Yes.
21 Q And who is employed in that department?
22 How many staff members do you have there?
23 A Four.
24 Q Four. And who are they?
25 A Susan Kent-Biro is one. Do you want

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1 their names or --
2 Q Yes, please.
3 A Susan Springer. We have a new gal,
4 Cheryl McDonald and Laura Marshall.
5 Q Okay. Now, you have an accounting
6 department within North Star. What other
7 departments do you have within North Star?
8 A Well, basically it's -- we have
9 accounting, and we have a variety of operations
10 managers that deal with the individual ports, and
11 we have a couple of salespeople.
12 Q Okay. And the operations managers, who
13 are they currently?
14 A We have Steve Black in Dutch Harbor,
15 Wayne Barrowcliff in Homer, Brad Robertson in
16 Anchorage, he also takes care of Seward, and Ryan
17 Sontag in Valdez.
18 Q Now, of these four employees that
19 you've just listed, to your knowledge and
20 recollection do you know if these four
21 individuals have had any dealings with the Homer
22 Spit project?
23 A No, none that I can think -- Laura
24 Marshall worked for us then, but she didn't
25 really have any dealings other than the

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| <p style="text-align: right;">Page 22</p> <p>1 invoicing. She probably did have something to do 2 with the invoicing. 3 Q Okay. So you have an accounting 4 department; you have the operations managers 5 department. Which other departments do you have 6 within North Star currently today? 7 A As far as departments, there really 8 aren't any other departments. 9 Q Okay. Why don't you explain to us the 10 kind of business that North Star engages in. 11 A We engage currently in contract 12 stevedoring, which is the physical loading and 13 unloading of materials on and off of vessels. We 14 also do heavy equipment leasing and project 15 management-type work and various construction 16 projects. We deal with lifting, heavy-lift type 17 operations, things of that nature. 18 Q Okay. And the stevedores, what do they 19 generally do for North Star? 20 A Stevedores. 21 Q Stevedores, yes. 22 A Longshoremen, are we talking about? 23 Q Yes. 24 A They could do anything from operating 25 forklifts to lashing containers and other cargo</p> | <p style="text-align: right;">Page 24</p> <p>1 A They can be one and the same. It's a 2 difference in terminology. Attorney, lawyer; 3 stevedore, longshoreman. 4 Q I appreciate that clarification. And 5 generally what are the job duties for a stevedore 6 that is hired by North Star? 7 A You asked that question already, but 8 I'll answer it again. They may operate different 9 types of machinery. They may send up a load. 10 They may lash down cargo on the deck of a barge. 11 They may be working the barge. 12 Q And the same as to the equipment; they 13 handle equipment for the company? 14 A Yes. 15 Q Now, are these equipment owned or 16 leased by North Star? 17 A Generally owned. 18 Q And does North Star have a different 19 fee structure for the equipment that are owned as 20 opposed to leased? If you say "generally owned," 21 is there any situation where North Star would 22 lease the equipment? 23 A There are times when we might lease a 24 piece of equipment and re-rent it or re-lease it 25 to a customer.</p> |
| <p style="text-align: right;">Page 23</p> <p>1 to the deck of a barge. Running different types 2 of equipment, things of that nature. 3 Q To the best of your recollection, in 4 this particular case, on the Homer Spit project, 5 North Star just had their stevedores on the 6 project; is that correct? 7 A I'm not quite sure what you're asking. 8 Q Back in 1997/1998, that time frame, to 9 the best of your recollection, North Star had its 10 stevedores working on the Homer Spit project; is 11 that correct? 12 A Again, do you want to rephrase that to 13 longshoremen? We did have some longshoremen on 14 that job, yes. We also had some management. 15 Q Okay. So can you tell us the 16 difference between the longshoremen and the 17 stevedores? 18 A Stevedore can be used in a number of 19 ways. It can be used as the profession itself, 20 stevedoring company; it's a type of company. 21 Q Right. 22 A Some people refer to the labor as a 23 stevedore or a longshoreman. 24 Q Okay. So a longshoreman has similar 25 duties as a stevedore or something different?</p> | <p style="text-align: right;">Page 25</p> <p>1 Q In that particular case, is there a 2 different fee structure? 3 A I can't really answer that question. 4 I'm not quite sure how you're asking it. 5 Q To the extent that you have to charge a 6 customer for the use of the equipment, do you 7 charge a higher rate if it's your own equipment 8 or a lower rate if it's not -- 9 A The only time I would lease equipment 10 is if I didn't have it in my inventory, so it 11 would naturally be a different fee structure I'd 12 incur on that because I wouldn't have that in my 13 current inventory. 14 Q Now, in which states is North Star 15 licensed to do business? 16 A Alaska. 17 Q Just in Alaska? 18 A That's correct. 19 Q Okay. And generally who does North 20 Star provide business to? 21 A Various steamship companies, barge 22 companies, construction companies, diving 23 companies. Anything that's around the water. We 24 do work for the oil companies. We do work for 25 the military.</p> |

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| <p style="text-align: right;">Page 26</p> <p>1 Q Now, what is North Star's custom and 2 practice in obtaining these different business 3 accounts, the ones that you just mentioned? For 4 example, does North Star go out and solicit these 5 companies, or these companies knock on North 6 Star's door and say, okay, I need some of your 7 employees to help us with this project? 8 A Both. 9 MR. SEWRIGHT: Objection; form of the 10 question. 11 BY MS. HO: 12 Q Let me ask you first: What is North 13 Star's custom and practice in obtaining business? 14 A It's a variety of things. We do some 15 advertising. We do some door-to-door type sales. 16 We have a web site. We have customers that come 17 to us. It's a fairly small niche business, so 18 most of our customers already know us; we already 19 know most of our customers. It's a fairly small 20 list. 21 Q Small world. So who is the person in 22 charge at North Star for managing these business 23 accounts? 24 A That's a pretty general term. 25 Q Okay. So why don't you narrow it down</p> | <p style="text-align: right;">Page 28</p> <p>1 companies? 2 A We may. We may do a variety of things. 3 Each individual case and customer can be 4 different. 5 Q Would you say one type of way to 6 consummate a potential business would be to enter 7 into a security agreement with the potential 8 business? 9 MR. SEWRIGHT: Objection to the form of 10 the question. 11 BY MS. HO: 12 Q Now, Mr. Bentz, you said there are a 13 variety of ways you're referring to. How does 14 North Star -- 15 A We already named some of those. It's a 16 fairly -- like I said, it's a very small niche 17 industry. Most of the people that we do business 18 with have been in business for some time. 19 Q Does North Star hold regular corporate 20 board meetings? 21 A We do have an annual meeting. 22 Q You have an annual meeting. And when 23 does that usually take place? 24 A It can be different each year. 25 Q And would it be once or twice a year?</p> |
| <p style="text-align: right;">Page 27</p> <p>1 for me. 2 A Why don't you ask a specific question 3 and I'll answer it. 4 Q Well, then, who at North Star is 5 responsible for obtaining these accounts? Is 6 there a particular person? 7 A Everybody at North Star participates to 8 some degree in trying to find business and secure 9 business. 10 Q What is North Star's custom and 11 practice in investigating whether the other 12 companies that you want to do business with is 13 financially capable to pay for North Star's 14 services? 15 A In some cases it's based on historical 16 practices and relationships that we've had with 17 the companies. In some cases we get a credit ap. 18 In some cases -- it just depends. 19 Q Now, if North Star ascertains that a 20 particular company is not financially viable to 21 do business with North Star, what does North Star 22 do? Do you back out of the deal? 23 A It doesn't happen very often. 24 Q Okay. Then, does North Star ask for a 25 personal guarantee from these potential</p> | <p style="text-align: right;">Page 29</p> <p>1 How often? 2 A There's only one annual meeting. 3 Q One annual meeting. Who usually 4 attends? 5 A Could be some of the board of 6 directors, myself. 7 Q Okay. Board of directors of North 8 Star. Would you list them, please? 9 A The board of directors for North Star; 10 it's an LLC, so there's two member companies, 11 which I've already stated who they are. 12 Q And then there are people within those 13 two separate LLCs that are invited to attend the 14 board meetings; is that correct? 15 A The two companies that are the member 16 companies and North Star have their own boards of 17 directors, I think. 18 Q Now, are there any minutes or notes 19 that are taken for these board meetings? 20 A Generally, on the annual meeting. 21 Q Were any board meetings held at North 22 Star back in 1997, to the best of your 23 recollection? 24 A I would assume that there was an annual 25 meeting then.</p> |

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| <p style="text-align: right;">Page 30</p> <p>1 Q And what about in 1998?</p> <p>2 A I would presume there was an annual</p> <p>3 meeting then.</p> <p>4 Q And does North Star keep these records</p> <p>5 of the board meetings and minutes?</p> <p>6 A Generally, we keep a copy of them.</p> <p>7 Q Do you think North Star would have a</p> <p>8 copy of these minute notes from 1997/1998?</p> <p>9 A We very well might, yeah.</p> <p>10 MS. HO: Michael, would you be able to</p> <p>11 produce these documents without a formal</p> <p>12 discovery request?</p> <p>13 MR. SEWRIGHT: I would prefer a formal</p> <p>14 discovery request, and then I'll send one right</p> <p>15 back to you for Nugget.</p> <p>16 MS. HO: That's assuming Nugget has any</p> <p>17 of these.</p> <p>18 Q I appreciate that, Mr. Bentz.</p> <p>19 Let's talk about your education. Let's</p> <p>20 start with high school. Did you go to high</p> <p>21 school around here, in Anchorage?</p> <p>22 A Yes.</p> <p>23 Q Which one?</p> <p>24 A West.</p> <p>25 Q West. You have an affinity there,</p> | <p style="text-align: right;">Page 32</p> <p>1 Q Are you currently enrolled in any</p> <p>2 institutions to obtain another degree of some</p> <p>3 sort?</p> <p>4 A No.</p> <p>5 Q Have you been deposed before?</p> <p>6 A Yes.</p> <p>7 Q And were you deposed personally or as a</p> <p>8 North Star company representative?</p> <p>9 A I believe as a North Star company</p> <p>10 representative.</p> <p>11 Q Do you recall which cases those were?</p> <p>12 A No, not exactly.</p> <p>13 Q Was it since you have been CEO and</p> <p>14 president of North Star?</p> <p>15 A I'm not sure whether I've been deposed</p> <p>16 before or after I was the president of North</p> <p>17 Star.</p> <p>18 Q Okay.</p> <p>19 A I believe before.</p> <p>20 Q Before you were president of North</p> <p>21 Star?</p> <p>22 A I believe.</p> <p>23 Q Now, was it -- what kind of case was</p> <p>24 it? Do you recall?</p> <p>25 A Well, actually I was asking Mike about</p> |
| <p style="text-align: right;">Page 31</p> <p>1 Michael.</p> <p>2 What about college? Where did you go</p> <p>3 to college?</p> <p>4 A Western Washington University in</p> <p>5 Bellingham, Washington.</p> <p>6 Q What degree did you receive?</p> <p>7 A A business degree.</p> <p>8 Q Business degree. And after that, did</p> <p>9 you go to any other institution?</p> <p>10 A No.</p> <p>11 Q Do you have any professional degrees or</p> <p>12 licenses?</p> <p>13 A Such as?</p> <p>14 Q Say, a general contractor's or a</p> <p>15 specific contracting business that you might have</p> <p>16 and you might go and obtain a professional degree</p> <p>17 in.</p> <p>18 A None such as that, no.</p> <p>19 Q Is there any professional license or</p> <p>20 degrees that are specific to a stevedoring</p> <p>21 company that you might have to obtain?</p> <p>22 A Huh-uh.</p> <p>23 Q So just a general business degree would</p> <p>24 be sufficient for this kind of company?</p> <p>25 A That's correct.</p> | <p style="text-align: right;">Page 33</p> <p>1 that earlier. I wasn't sure which one. I mean,</p> <p>2 we've had a couple of cargo claims and we've had</p> <p>3 a couple of personal injury claims in the last 20</p> <p>4 years. And to be honest with you, I can't</p> <p>5 remember which case it was that I was deposed on.</p> <p>6 Q Of these cases, generally, what was the</p> <p>7 result? Did you settle out or --</p> <p>8 A I'm not sure I'm following you. Did we</p> <p>9 win or lose?</p> <p>10 Q Yes.</p> <p>11 A I believe in most cases we've been</p> <p>12 successful, yes.</p> <p>13 Q Do you have any knowledge of any other</p> <p>14 lawsuit between North Star and any of the</p> <p>15 defendants in this case, aside from this</p> <p>16 particular one? For example, North Star and</p> <p>17 Nugget in another case?</p> <p>18 A That particular example, no.</p> <p>19 Q Okay. And North Star against USF&G?</p> <p>20 A Other than this case?</p> <p>21 Q Other than this case.</p> <p>22 A No.</p> <p>23 Q North Star against Mr. Robert LaPore,</p> <p>24 other than this case?</p> <p>25 A No.</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 Q And North Star against -- strike that.</p> <p>2 Mr. Bentz, are you married?</p> <p>3 A Yes.</p> <p>4 Q And do you have any children?</p> <p>5 A Yes.</p> <p>6 Q How many children do you have?</p> <p>7 A Between --</p> <p>8 MR. SEWRIGHT: I'm going to object to</p> <p>9 the relevancy of this. What does that have to do</p> <p>10 with this case?</p> <p>11 MS. HO: Michael, let me just ask the</p> <p>12 questions. After I ask my next question, you can</p> <p>13 object.</p> <p>14 Q Mr. Bentz?</p> <p>15 A I helped raise six children.</p> <p>16 Q That's great. Congratulations.</p> <p>17 Now, is your wife or any of your</p> <p>18 children officers or representatives of North</p> <p>19 Star --</p> <p>20 A No.</p> <p>21 Q -- in any capacity?</p> <p>22 A No.</p> <p>23 Q Thank you. How about your previous</p> <p>24 employment? Prior to your joining to North Star,</p> <p>25 what were your jobs?</p> | <p style="text-align: right;">Page 36</p> <p>1 review that.</p> <p>2 A It looks familiar.</p> <p>3 Q Are you ready, Mr. Bentz?</p> <p>4 A For what?</p> <p>5 Q To identify this document, otherwise I</p> <p>6 will.</p> <p>7 A It looks similar to one I've seen, yes.</p> <p>8 Q So, for the record, this is North</p> <p>9 Star's Second Supplemental Disclosures that's</p> <p>10 dated on or about October 18th of 2005.</p> <p>11 Would you agree, Mr. Bentz?</p> <p>12 A To what?</p> <p>13 Q To the date of this document, which is</p> <p>14 the second to the last page, Page 6 of 7.</p> <p>15 A What was your question?</p> <p>16 Q Do you recognize the date?</p> <p>17 A October 18th --</p> <p>18 Q -- 2005?</p> <p>19 A Uh-huh.</p> <p>20 Q Thank you. Would you please turn to</p> <p>21 Page 5 of 7 under the paragraph Damages?</p> <p>22 A Okay.</p> <p>23 Q Okay. Now, under Paragraph C, Damages,</p> <p>24 under the Miller Act it says that essentially</p> <p>25 North Star alleges that it's owed under the</p> |
| <p style="text-align: right;">Page 35</p> <p>1 A I worked in an ice cream parlor once.</p> <p>2 Q That must be nice. Free ice cream.</p> <p>3 Where was this at?</p> <p>4 A In Anchorage.</p> <p>5 Q Any other employment prior to North</p> <p>6 Star?</p> <p>7 A Worked up in a gold mine once.</p> <p>8 Q Did you find any gold?</p> <p>9 A Worked at a car rental place once when</p> <p>10 I was in high school.</p> <p>11 Q Okay. Was that all?</p> <p>12 A I'm sure I've had some other jobs, but</p> <p>13 I've pretty much been with North Star my entire</p> <p>14 career.</p> <p>15 Q I appreciate that. Let me introduce</p> <p>16 another exhibit.</p> <p>17 (Exhibit 2 marked.)</p> <p>18 BY MS. HO:</p> <p>19 Q Okay. Mr. Bentz, would you take a</p> <p>20 moment to review this document?</p> <p>21 Do you recognize it, Mr. Bentz?</p> <p>22 A I recognize the title of it. I haven't</p> <p>23 read it all, so I'm not sure if it's identical to</p> <p>24 the one that I've probably seen.</p> <p>25 Q You go ahead and take the time to</p> | <p style="text-align: right;">Page 37</p> <p>1 Miller Act a principal sum of \$124,724.98; is</p> <p>2 that correct?</p> <p>3 A That's what this document says, yes.</p> <p>4 Q And then --</p> <p>5 MR. SEWRIGHT: Counsel, for the record,</p> <p>6 these were calculated as of May 16th, 2005.</p> <p>7 MS. HO: Okay. That's noted.</p> <p>8 Q Now, if you look on the second part of</p> <p>9 this, it's State Law Claims, and then</p> <p>10 Subparagraph A lists the State Law Claims. It</p> <p>11 has breach of contract, promissory estoppel,</p> <p>12 quasi-contract, agency, detrimental reliance,</p> <p>13 unjust enrichment and restitution, quantum</p> <p>14 meruit, equitable subordination and constructive</p> <p>15 trust.</p> <p>16 And you list -- or North Star lists</p> <p>17 damages calculating to \$564,235 or \$346,466; is</p> <p>18 that correct?</p> <p>19 A Is what correct?</p> <p>20 Q The numbers that are listed on the</p> <p>21 State Law Claims for Paragraph A.</p> <p>22 A The numbers that -- what you just said</p> <p>23 is true, yes.</p> <p>24 Q Okay. Just a question here in</p> <p>25 terms -- is North Star asking for this particular</p> |

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| <p style="text-align: right;">Page 38</p> <p>1 amount under the State law claims, Paragraph A, 2 in addition to the amount that was just listed 3 under the Miller Act? 4 A I'm sorry. Are you asking me to 5 interpret what the totals are? 6 Q I'm just trying to clarify whether 7 North Star is expecting damages under the Miller 8 Act for that sum plus the damages for the State 9 Law Claims. Are you combining the two numbers? 10 MR. SEWRIGHT: Objection to the form of 11 the question; legal conclusion. 12 BY MS. HO: 13 Q Well, we want to find out what the 14 basis of the calculation is. 15 A Isn't it stated right here? 16 Q Well, you tell me. It looks like North 17 Star is asking for about 125,000 under the Miller 18 Act and then it's asking for another 19 approximately \$565,000 or \$347,000, depending on 20 which prejudgment interest we're looking at, 21 under the State Law Claims, Paragraph A. 22 I mean, as a North Star corporate 23 representative, we just want to be sure what the 24 basis of these calculations are. Are these 25 separate and distinct numbers that you're asking</p> | <p style="text-align: right;">Page 40</p> <p>1 A The same number under the Miller Act 2 flows down into the State law claim. You can see 3 the numbers are identical where it floats down. 4 It's rounded. So I'm not quite sure I understand 5 your question. We're not asking for the same 6 thing twice. 7 Q Okay. So you're just asking for one 8 specific amount? It's either/or; mutually 9 exclusive? 10 MR. SEWRIGHT: The question's already 11 been answered. 12 BY MS. HO: 13 Q Well, Mr. Bentz, you're the corporate 14 representative. North Star is asking for alleged 15 sums against my client, and we want to be sure 16 how you calculate this. It has to be very clear. 17 Are you intending to claim Miller Act 18 damages as well as the State law claim damages 19 and then add everything up together, which would 20 probably be over and above the original 125,000 21 that North Star is seeking? 22 MR. SEWRIGHT: Objection; form of the 23 question; asked and answered. 24 BY MS. HO: 25 Q Mr. Bentz, are you going to answer</p> |
| <p style="text-align: right;">Page 39</p> <p>1 for, or are these combined on top of? Are you 2 stacking these damage numbers? 3 A I'm sorry. I don't understand what you 4 mean by stacking the damage numbers. 5 Q Well, for example, is North Star 6 expecting simply to be paid under the Miller Act 7 124,000 plus the State Law Claims of about 8 565,000, to make it the simplest? 9 MR. SEWRIGHT: Objection to the form of 10 the question; mischaracterization. 11 A It says in here that we have the amount 12 that was owed us, attorney's fees and interest, 13 the amount of money that we didn't receive 14 because the work was taken away from us. I can 15 tell you what it all amounts to, but I can't, you 16 know, as far as what part of it's Miller Act, 17 what part of it's State claim, what part of 18 it's -- all the legalese part, I can't get into 19 the legalese part. 20 Q I'm not expecting you to. 21 MR. SEWRIGHT: Counsel, they're not 22 stacked. 23 BY MS. HO: 24 Q Okay. So they're not stacked. So it's 25 mutually --</p> | <p style="text-align: right;">Page 41</p> <p>1 that? 2 A Again, there's no duplication of the 3 same amount twice, if that's what you're asking. 4 Q Right. The same thing goes for 5 Paragraph C, Damages, State Law Claims, 6 Subparagraph B, tortious misrepresentation, and 7 nondisclosure including fraud, negligence, and 8 tortious interference. Those are the State law 9 claims and, again, you're asking or North Star is 10 asking for approximately 565,000 or the 11 alternative 347,000. 12 MR. SEWRIGHT: Objection, Counsel. 13 Misstates the response under State law claims. 14 There's an additional sum of approximately 15 \$80,000 for lost profit. 16 MS. HO: Thank you, Counsel. I was 17 getting to that. 18 MR. SEWRIGHT: That's just under the 19 State Law Claims. 20 BY MS. HO: 21 Q Again, Mr. Bentz, we want to be sure 22 that you're not stacking -- 23 MR. SEWRIGHT: Actually, I'm incorrect. 24 There is some issue as to breach of contract for 25 that additional amount too, but that was stated</p> |

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1 in here.
 2 MS. HO: Stated where?
 3 MR. SEWRIGHT: I thought it was. "May
 4 also be awardable as additional breach of
 5 contract damages." I'm sorry if I misstated it.
 6 MS. HO: That's fine.
 7 Q These are very serious allegations that
 8 North Star has lodged against our clients, and
 9 it's a lot of money that you guys are allegedly
 10 asking us to pay, so we want to be very clear as
 11 to how North Star is calculating these damages.
 12 MR. SEWRIGHT: Are you done preaching?
 13 MS. HO: I'm not preaching here, sir.
 14 Q Mr. Bentz, again, for the record, these
 15 are separate numbers?
 16 A There are no duplicates.
 17 Q Okay. Thank you.
 18 Now, Mr. Bentz, do you know who is
 19 Robert LaPore?
 20 A I'm sorry?
 21 Q Do you know who is Robert LaPore?
 22 A I know the name Robert LaPore.
 23 Q Have you met him personally?
 24 A I'm not sure. I'm not sure if I've met
 25 him personally or not.

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1 Q Have you had any communications with
 2 him in correspondence or phone?
 3 A I don't believe so.
 4 Q Okay. And who within North Star would
 5 have had such contacts?
 6 A Jack Goodwill had most of the contact
 7 with Robert LaPore.
 8 Q Anybody else within North Star who had
 9 those contacts with Mr. LaPore?
 10 A I'm not sure who all has spoken with
 11 Robert LaPore.
 12 Q Does North Star keep any business
 13 records or notes that would reflect who would
 14 have communications with Mr. LaPore?
 15 A No, no, unless a particular individual
 16 kept a personal note or something.
 17 Q What about Mr. Vernon Rush? Have you
 18 personally met Mr. Rush?
 19 A I don't know.
 20 Q Do you know who he is?
 21 A I've heard the name. I can't say that
 22 I've ever met him. I don't know. I might have
 23 met him at some business function, but I don't
 24 know.
 25 Q Some business function. What kind of a

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1 business function?
 2 A It's a small business world that we
 3 live in with contracting-type business. So
 4 there's various association meetings, EGC,
 5 Resource Development Council. I might have met
 6 any number of the people who are in these
 7 documents at some time or another, but then again
 8 I don't know if I have or not.
 9 Q In these usual circumstances when you
 10 go to these meetings and you meet these people in
 11 the industry, do you take their business cards
 12 and whatnot?
 13 A Sometimes; not always.
 14 Q But you wouldn't recollect whether or
 15 not you had met this particular person at any
 16 particular meeting?
 17 A I already stated, I don't know if I've
 18 met Mr. Rush or not.
 19 Q And anybody at North Star that you know
 20 of who might have met Mr. Rush?
 21 A I don't know. I can't speak for
 22 somebody else. I don't --
 23 Q I'm not asking you to speak for
 24 somebody else. I'm asking you to speak on behalf
 25 of North Star.

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1 A What's the question?
 2 Q Do you have any recollection or do you
 3 know of anybody within North Star who might have
 4 had contact with Mr. Rush?
 5 MR. SEWRIGHT: Object to the form of
 6 the question.
 7 BY MS. HO:
 8 Q Your answer would be you do not know?
 9 A I'm not certain.
 10 Q Who in North Star would know? Would
 11 you be able to contact somebody within North Star
 12 and say, have you met Mr. Rush, or, have you had
 13 previous dealings with Mr. Rush?
 14 A No. I'm the only one -- you asked
 15 earlier on who else at North Star was still an
 16 employee that had any knowledge of this case, and
 17 I told you I was the only one that's still an
 18 employee that would have any knowledge of this
 19 case. Therefore, I don't have anybody at North
 20 Star that I could call to ask if they'd had any
 21 dealings with Mr. Rush.
 22 Q Now, what about Mr. Goodwill? You just
 23 said that he had some dealings with Mr. LaPore.
 24 Isn't that somebody you can consult with within
 25 North Star?

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| <p style="text-align: right;">Page 46</p> <p>1 A He's no longer employed at North Star.</p> <p>2 Q So Mr. Goodwill is not employed with</p> <p>3 North Star?</p> <p>4 A No.</p> <p>5 Q What was Mr. Goodwill's position back</p> <p>6 in 1997?</p> <p>7 A He was basically an operations manager</p> <p>8 for Seward.</p> <p>9 Q And how long was Mr. Goodwill employed</p> <p>10 with North Star?</p> <p>11 A I couldn't tell you the exact number of</p> <p>12 years. I think he went for work for us starting</p> <p>13 sometime in the '70s.</p> <p>14 Q Do you know when Mr. Goodwill ended his</p> <p>15 employment with North Star?</p> <p>16 A I believe it was in '9 -- I'm not</p> <p>17 certain, but I think it was around 2002.</p> <p>18 Q Do you have any information of his</p> <p>19 current whereabouts?</p> <p>20 A I believe he lives in Seward still. He</p> <p>21 was born and raised there.</p> <p>22 Q What about Mr. Herschell Hall? Have</p> <p>23 you had any personal dealings with Mr. Hall?</p> <p>24 A I don't know.</p> <p>25 Q Do you know of anybody within North</p> | <p style="text-align: right;">Page 48</p> <p>1 find records to indicate if they've ever been</p> <p>2 invoiced prior to this project. I don't believe</p> <p>3 so, but that's just from my own recollection.</p> <p>4 Q And what about after the Homer Spit</p> <p>5 project? Did North Star and Spencer Rock enter</p> <p>6 into business relationships?</p> <p>7 A Not that I know of.</p> <p>8 Q So, to your recollection and to North</p> <p>9 Star's, this particular relationship between</p> <p>10 North Star and Spencer Rock on the Homer Spit</p> <p>11 project is the one and only business dealing that</p> <p>12 it had with each another?</p> <p>13 A To the best of my recollection.</p> <p>14 Q Have you ever dealt with any other</p> <p>15 person at Spencer Rock on the Homer Spit project,</p> <p>16 other than the people I just listed earlier?</p> <p>17 A I'm not sure.</p> <p>18 Q You don't have any recollection of</p> <p>19 anybody else from Spencer Rock that you might</p> <p>20 have had business with?</p> <p>21 A At the time, not that I know of. I</p> <p>22 think I've spoken with Randy Randolph before.</p> <p>23 Q Randy Randolph. What kind of</p> <p>24 communications did you have with Mr. Randolph?</p> <p>25 A I'm not certain. I know I've met him</p> |
| <p style="text-align: right;">Page 47</p> <p>1 Star who's had dealings with Mr. Hall?</p> <p>2 A Not that I know of, but I don't know</p> <p>3 the man, so.</p> <p>4 Q Now, is it your understanding that</p> <p>5 Mr. LaPore and Mr. Rush and Mr. Hall were</p> <p>6 associated with Spencer Rock Products during the</p> <p>7 Homer Spit project?</p> <p>8 A I don't know.</p> <p>9 Q Have you gone through the pleadings?</p> <p>10 A There's boxes of documents similar to</p> <p>11 what's in your chair there. I've seen a lot of</p> <p>12 names and a lot of different things, you know,</p> <p>13 over the course of the eight years.</p> <p>14 Q Okay, Mr. Bentz. So you understand</p> <p>15 this is a very long litigation, lots of events</p> <p>16 and lots of people involved?</p> <p>17 A Sure.</p> <p>18 Q Thank you. Do you know of a Spencer</p> <p>19 Rock Products, Incorporated?</p> <p>20 A I know the name.</p> <p>21 Q Has North Star done business with</p> <p>22 Spencer Rocks previous to the Homer Spit project?</p> <p>23 A I'm not sure.</p> <p>24 Q Well, who would know, Mr. Bentz?</p> <p>25 A We would have to go back and try to</p> | <p style="text-align: right;">Page 49</p> <p>1 before.</p> <p>2 Q In what capacity did you speak with</p> <p>3 Mr. Randolph? On a personal basis or as a</p> <p>4 company representative of North Star?</p> <p>5 A Probably both. I've seen him before at</p> <p>6 various functions.</p> <p>7 Q Okay. Now, let's talk about North</p> <p>8 Star's business recordkeeping. How long does</p> <p>9 North Star maintain its business records</p> <p>10 generally?</p> <p>11 A Depends on what you're talking about.</p> <p>12 Q Well, what specific types of records</p> <p>13 does North Star keep?</p> <p>14 A Well, we keep all of our records the</p> <p>15 legal required time, seven years, and some things</p> <p>16 we have, just for historical reasons, photographs</p> <p>17 from going all the way back to the '50s. There</p> <p>18 is no set policy in place that says that you keep</p> <p>19 all your letters for X number of years or</p> <p>20 anything like that. So other than the legal</p> <p>21 requirements, it's an issue of space and whether</p> <p>22 or not we feel something is important enough to</p> <p>23 keep or not.</p> <p>24 Q And what about the computer systems</p> <p>25 within North Star? Currently, are there computer</p> |

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| <p style="text-align: right;">Page 50</p> <p>1 back-up systems like servers?</p> <p>2 A Yes.</p> <p>3 Q And North Star employees and personnel,</p> <p>4 do they e-mail each other?</p> <p>5 A Certainly.</p> <p>6 Q Now, these e-mails are backed up in the</p> <p>7 servers. Did you produce them? Did North Star</p> <p>8 produce them?</p> <p>9 A Does North Star produce what?</p> <p>10 Q Did North Star produce copies of these</p> <p>11 e-mails in its discovery responses? Do you have</p> <p>12 any knowledge of that?</p> <p>13 A I'm not certain. When I asked the</p> <p>14 question the other day, the same question -- or</p> <p>15 Mike asked the same question back to you --</p> <p>16 MR. SEWRIGHT: When I asked the</p> <p>17 question of Mr. Smithson.</p> <p>18 A Yeah, Mr. Smithson on that, I did go</p> <p>19 back and I did find some e-mails on the subject,</p> <p>20 which I gave to Mike on Friday.</p> <p>21 MS. HO: Okay. Now, Mike I was at your</p> <p>22 office last Friday. I don't recall seeing any</p> <p>23 current e-mails.</p> <p>24 MR. SEWRIGHT: No, you were at my</p> <p>25 office Thursday morning.</p> | <p style="text-align: right;">Page 52</p> <p>1 about the e-mails?</p> <p>2 MS. HO: If anything is pertinent to</p> <p>3 this particular case that might go to the claim</p> <p>4 of the defense.</p> <p>5 MR. SEWRIGHT: Well, we're going to</p> <p>6 have a problem there because a lot of it's</p> <p>7 attorney-client privilege and proprietary</p> <p>8 information. There's no confidentiality</p> <p>9 stipulation in this case yet. I would suggest</p> <p>10 you get them first, or get what is discoverable</p> <p>11 first, likely after we enter into a stipulation,</p> <p>12 and we cross that bridge when we come to.</p> <p>13 MS. HO: Okay. In the meanwhile, I'll</p> <p>14 reserve our client's right to examine those</p> <p>15 documents and to question the corporate designee</p> <p>16 or someone within North Star who has knowledge of</p> <p>17 those e-mails. As you say, we'll cross that</p> <p>18 bridge when we get there.</p> <p>19 MR. SEWRIGHT: Understood. Just as I</p> <p>20 look forward to seeing all those e-mails that</p> <p>21 Mr. Smithson is going to find for me. All those</p> <p>22 e-mails back and forth between Nugget personnel</p> <p>23 and USF&G and whoever else.</p> <p>24 MS. HO: Well, again, we stated to you</p> <p>25 that we were going to do that and we'll uphold</p> |
| <p style="text-align: right;">Page 51</p> <p>1 MS. HO: Okay. Thursday morning.</p> <p>2 MR. SEWRIGHT: And I just recently</p> <p>3 received these. There are just a few. They have</p> <p>4 mixed proprietary information involving other</p> <p>5 jobs or issues. I think like a couple are</p> <p>6 attorney-client privilege, and I haven't had a</p> <p>7 chance to go through them and ready them for</p> <p>8 production.</p> <p>9 MS. HO: Okay. So would you --</p> <p>10 MR. SEWRIGHT: This is Monday morning.</p> <p>11 That was Friday. And you were over at my office</p> <p>12 Thursday.</p> <p>13 MS. HO: So after you have a chance to</p> <p>14 look at those and ascertain whether or not</p> <p>15 privilege applies, are you willing to produce</p> <p>16 them to respond to discovery requests?</p> <p>17 MR. SEWRIGHT: We will meet our</p> <p>18 responsibilities.</p> <p>19 MS. HO: I appreciate that. And when</p> <p>20 are you expected to do that?</p> <p>21 MR. SEWRIGHT: Pretty soon.</p> <p>22 MS. HO: Okay. Now, if I have</p> <p>23 questions on those e-mails, I'm going to ask</p> <p>24 Mr. Bentz here to follow up on some questions.</p> <p>25 MR. SEWRIGHT: You're going to ask him</p> | <p style="text-align: right;">Page 53</p> <p>1 our duty under the discovery rules.</p> <p>2 MR. SEWRIGHT: Understood.</p> <p>3 BY MS. HO:</p> <p>4 Q Now, Mr. Bentz, as for the computer</p> <p>5 information within the business in North Star,</p> <p>6 you've produced those to your attorney. Does</p> <p>7 North Star's employees have personal computers at</p> <p>8 home that they use for work?</p> <p>9 A No.</p> <p>10 Q How about PDAs or any other mobile</p> <p>11 device?</p> <p>12 A There's a couple of us that have</p> <p>13 Blackberries, but only recently.</p> <p>14 MR. SEWRIGHT: We're talking about</p> <p>15 1997?</p> <p>16 MS. HO: Counsel, I'm talking currently</p> <p>17 and then I'll go back to 1997 -- those weren't</p> <p>18 around.</p> <p>19 Q But to the extent that any computer</p> <p>20 systems were in effect in 1997 within North Star,</p> <p>21 would you have any ability to retrieve those</p> <p>22 documents either in hard copy form or perhaps you</p> <p>23 might have a computer disk floating around?</p> <p>24 A What documents are you referring to?</p> <p>25 Q That refers to the Homer Spit project</p> |

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| <p style="text-align: right;">Page 54</p> <p>1 within North Star's files.</p> <p>2 A We just addressed that. Anything that</p> <p>3 had the word Nugget in it, I gave to Mike.</p> <p>4 Q So then are you aware as a corporate</p> <p>5 representative of any other nonprivileged</p> <p>6 document on this Homer Spit project for this</p> <p>7 litigation that has not been produced to my</p> <p>8 clients?</p> <p>9 A No.</p> <p>10 Q So you've basically turned over your</p> <p>11 office?</p> <p>12 A Everything.</p> <p>13 Q Everything. And you've asked every</p> <p>14 employee within North Star to turn over their</p> <p>15 documents?</p> <p>16 A Yes.</p> <p>17 MR. SEWRIGHT: Counsel, I have not</p> <p>18 asked the client to reproduce to me so I can</p> <p>19 reproduce to you pleadings in this case.</p> <p>20 MS. HO: Well, that's something that</p> <p>21 you had asked for and we've done all our --</p> <p>22 MR. SEWRIGHT: No, no. I never asked</p> <p>23 you for pleadings in this case. I asked you for</p> <p>24 pleadings in the State case which is a different</p> <p>25 matter.</p> | <p style="text-align: right;">Page 56</p> <p>1 BY MS. HO:</p> <p>2 Q Mr. Bentz, do you recognize this</p> <p>3 document?</p> <p>4 A I haven't read the whole thing. Do you</p> <p>5 want me to read the entire document?</p> <p>6 Q No. Just look through and see if you</p> <p>7 recognize it and if you recall signing this</p> <p>8 document.</p> <p>9 (Short break taken.)</p> <p>10 A Okay. Go ahead.</p> <p>11 Q Mr. Bentz, you've taken a few moments</p> <p>12 to look over what is marked as Defendants'</p> <p>13 Exhibit No. 3.</p> <p>14 Do you recognize this document?</p> <p>15 A It looks similar to one I've seen</p> <p>16 before.</p> <p>17 Q So this is North Star's Responses to</p> <p>18 Defendants' First Set of Discovery Requests.</p> <p>19 That's on the first page.</p> <p>20 Do you see that, sir?</p> <p>21 A Yes.</p> <p>22 Q Do you disagree?</p> <p>23 A No.</p> <p>24 Q And then on page 17, if you would</p> <p>25 please turn to that, it's dated November 15th,</p> |
| <p style="text-align: right;">Page 55</p> <p>1 MS. HO: It's a different matter, which</p> <p>2 we've produced to you those documents which are</p> <p>3 not privileged.</p> <p>4 Q As far as this case is concerned, I</p> <p>5 just want to be sure that North Star has once</p> <p>6 again gone through its offices. Other than the</p> <p>7 pleadings and copies thereof, are there any other</p> <p>8 nonprivileged documents within North Star that</p> <p>9 you think has not been produced to our clients?</p> <p>10 A No. I think everything has been</p> <p>11 produced to you. Unfortunately, the same hasn't</p> <p>12 come in the other direction.</p> <p>13 Q What's this now?</p> <p>14 A Unfortunately, the same hasn't come</p> <p>15 this direction.</p> <p>16 Q I think we have. I think your counsel</p> <p>17 has noticed that. He was in our office a couple</p> <p>18 of weeks ago looking at about six or seven boxes</p> <p>19 of documents.</p> <p>20 MR. SEWRIGHT: You don't need to</p> <p>21 comment on what you think I've noted.</p> <p>22 BY MS. HO:</p> <p>23 Q I'm going to introduce another document</p> <p>24 here. Just take a moment to review that.</p> <p>25 (Exhibit 3 marked.)</p> | <p style="text-align: right;">Page 57</p> <p>1 2005; is that correct?</p> <p>2 A Yes.</p> <p>3 Q And then on page 16, the page before</p> <p>4 that, is a verification page. Do you recognize</p> <p>5 the signature there?</p> <p>6 A Yes.</p> <p>7 Q And whose signature is that?</p> <p>8 A Looks like mine.</p> <p>9 Q Good. And that's Mr. Bentz and you are</p> <p>10 the president of North Star. And you've reviewed</p> <p>11 these discovery responses, correct?</p> <p>12 A Somewhat.</p> <p>13 Q Somewhat. "Somewhat" meaning that</p> <p>14 before you signed these you had a chance to look</p> <p>15 through these?</p> <p>16 A Yes.</p> <p>17 Q Now, let's go to page 9. Would you</p> <p>18 please turn to there? And I'm asking you</p> <p>19 specifically on Request for Production No. 4, I'm</p> <p>20 asking North Star to produce any joint</p> <p>21 prosecution and/or joint defense agreements</p> <p>22 between North Star and Metco. And it looks like</p> <p>23 there is none.</p> <p>24 To the best of your recollection, North</p> <p>25 Star does not have such documents with Metco?</p> |

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1 A No.
 2 Q No written agreement?
 3 A No.
 4 Q Anything oral outside of
 5 attorney-client work product privileges
 6 whatsoever?
 7 A No.
 8 Q Nobody at North Star, including
 9 yourself, has kept memorandums, notes,
 10 correspondence to the effect of any conversations
 11 with representatives of Metco?
 12 A No.
 13 Q Thank you. Then, turn to page 10 if
 14 you will, and Request for Production No. 5.
 15 Again, it's asking North Star to produce any
 16 documents that were between North Star and Metco.
 17 To your knowledge, have all the
 18 documents been produced that are nonprivileged?
 19 A Yeah.
 20 Q And the same with Request for
 21 Production No. 6. We're asking for all possible
 22 joint prosecution and/or joint defense agreements
 23 between North Star and Shoreside Petroleum,
 24 Incorporated.
 25 To your knowledge, are you aware of any

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1 written agreements between the two companies?
 2 A No.
 3 Q Nothing written, correct?
 4 A No.
 5 Q Anything oral in terms of North Star's
 6 employees or representatives might have come some
 7 conversations or communications with Shoreside
 8 Petroleum and perhaps one of the employees have
 9 written down notes to that effect?
 10 MR. SEWRIGHT: About this matter?
 11 MS HO: Yes, outside of attorney-client
 12 and attorney work product.
 13 A Not that I know of.
 14 BY MS. HO:
 15 Q Thank you. Let's turn to page 11 if
 16 you will, and we're asking for any possible joint
 17 prosecution and/or joint defense agreements
 18 between North Star and Spencer Rock Products,
 19 Incorporated.
 20 To your knowledge, are you aware of any
 21 written agreements?
 22 A No.
 23 Q And anything in terms of communications
 24 between North Star employees and Spencer Rock
 25 Product employees?

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1 MR. SEWRIGHT: Other than counsel.
 2 BY MS. HO:
 3 Q Other than counsel.
 4 A Not that I'm aware of.
 5 Q And the same with Request for
 6 Production No. 10. Any and all joint prosecution
 7 and/or joint defense agreements between North
 8 Star and Mr. Robert LaPore?
 9 A No.
 10 Q No written agreements. And any
 11 communications taken by North Star's employees
 12 and representatives outside of privileges
 13 asserted by your attorney?
 14 A No.
 15 MR. SEWRIGHT: Counsel, I guess a
 16 clarification. Of course there was a personal
 17 guarantee. It was documentation that has been
 18 produced.
 19 MS. HO: I've seen that. We'll get to
 20 that at another point today.
 21 MR. SEWRIGHT: You don't have to get to
 22 it. I just wanted to clarify that there were
 23 those documents.
 24 MS. HO: Okay. There were some, and I
 25 understand that. We'll get to those later.

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1 Q If you would please turn to page 14 and
 2 Request for Production No. 19, indicating that we
 3 would like to have North Star produce documents
 4 that reflect their original contract or project
 5 agreement between North Star and Spencer Rock
 6 Products.
 7 Were there any written agreements
 8 between North Star and Spencer Rock Products on
 9 the Homer Spit project?
 10 A Anything that was in writing you have.
 11 Q Okay. And any subsequent modifications
 12 to that original agreement that was not produced,
 13 to your knowledge?
 14 A There is nothing that's in writing that
 15 has anything to do with this project that hasn't
 16 been produced to you.
 17 Q Thank you, Mr. Bentz. I'm going to
 18 mark this as another exhibit.
 19 (Exhibit 4 marked.)
 20 BY MS. HO:
 21 Q This is Defendants' Exhibit No. 4.
 22 Mr. Bentz, would you please take a
 23 moment to review this document?
 24 Do you recognize it, Mr. Bentz?
 25 A This particular document?

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| <p style="text-align: right;">Page 62</p> <p>1 Q Yes, sir.</p> <p>2 A I'm not sure if I've seen it or not</p> <p>3 before.</p> <p>4 MR. SEWRIGHT: This isn't something</p> <p>5 that my client produced, is it?</p> <p>6 MS. HO: Yes, it is. It was produced</p> <p>7 at your offices last Thursday.</p> <p>8 MR. SEWRIGHT: Part of that stuff</p> <p>9 that -- the Jack Goodwill package?</p> <p>10 MS. HO: Yes.</p> <p>11 MR. SEWRIGHT: Okay.</p> <p>12 BY MS. HO:</p> <p>13 Q So this particular document shows a</p> <p>14 copy of four separate and distinct business</p> <p>15 cards. I'll list the first one as Spencer Rock</p> <p>16 Products, Incorporated --</p> <p>17 MR. SEWRIGHT: Objection to the</p> <p>18 characterization.</p> <p>19 BY MS. HO:</p> <p>20 Q Okay. Then I'll have Mr. Bentz</p> <p>21 describe it.</p> <p>22 Would you please state for the record:</p> <p>23 What do you see on this document? For example,</p> <p>24 on the upper left-hand corner there's a copy of</p> <p>25 what looks to be a business card. Can you tell</p> | <p style="text-align: right;">Page 64</p> <p>1 Q It says Spencer Rock Products,</p> <p>2 Incorporated; is that correct?</p> <p>3 A It says that on the upper left-hand</p> <p>4 corner of this page.</p> <p>5 Q Okay. And then it looks like on that</p> <p>6 particular copy of the business card, the</p> <p>7 business address is 1301 Dowling, No. 109, P.O.</p> <p>8 Box 244063, Anchorage, Alaska 99524. Is that</p> <p>9 what you see, also?</p> <p>10 A I see that on this page, yeah.</p> <p>11 Q Okay. And then on the lower part of</p> <p>12 the document, on the lower left-hand side, there</p> <p>13 is a copy of a business card of LDR Engineering</p> <p>14 Services. Would you agree with me, sir? Do you</p> <p>15 see that?</p> <p>16 A I see the words LDR Engineering</p> <p>17 Services on this document.</p> <p>18 Q And do you see the name L.D. "Randy"</p> <p>19 Randolph, comma, PE on that business card?</p> <p>20 A Yes.</p> <p>21 Q Now, this business card, a copy</p> <p>22 thereof, was found in North Star's files. Do you</p> <p>23 have any knowledge who might have retrieved this</p> <p>24 business card?</p> <p>25 A I have no personal knowledge of who</p> |
| <p style="text-align: right;">Page 63</p> <p>1 me what name it is?</p> <p>2 MR. SEWRIGHT: Objection to the form of</p> <p>3 the question. The documents speak for</p> <p>4 themselves, unless you can establish that</p> <p>5 Mr. Bentz created these documents, that he</p> <p>6 created these business cards.</p> <p>7 MS. HO: Counsel, this particular</p> <p>8 document was disclosed to me by you from North</p> <p>9 Star's files.</p> <p>10 MR. SEWRIGHT: These are copies of</p> <p>11 business cards. Unless you can establish that he</p> <p>12 created the business cards, the documents speak</p> <p>13 for themselves.</p> <p>14 MS. HO: And this document was produced</p> <p>15 in North Star's files. Now, Mr. Bentz --</p> <p>16 MR. SEWRIGHT: Same point; same</p> <p>17 objection.</p> <p>18 MS. HO: Counsel, your objection is</p> <p>19 noted.</p> <p>20 Q I will ask Mr. Bentz again: Would you</p> <p>21 please tell me for the record, what do you see in</p> <p>22 terms of the copy of the business card in the</p> <p>23 upper left-hand corner, the first one there?</p> <p>24 A What specifically do you want me to</p> <p>25 tell you?</p> | <p style="text-align: right;">Page 65</p> <p>1 might have retrieved this business card.</p> <p>2 Q If you look to the right of that</p> <p>3 particular copy of that business card, you see</p> <p>4 another business card that states Nugget</p> <p>5 Construction, Inc.; is that correct?</p> <p>6 A Uh-huh.</p> <p>7 Q And you also see the name L.D. "Randy"</p> <p>8 Randolph, comma, PE, Senior Engineer; is that</p> <p>9 correct?</p> <p>10 A I see that on this document, yeah.</p> <p>11 Q Now, do you know or does North Star</p> <p>12 know when they received this copy of the business</p> <p>13 card from Randy Randolph?</p> <p>14 A I do not know.</p> <p>15 Q Do you know of anyone else within North</p> <p>16 Star who might know?</p> <p>17 A No.</p> <p>18 Q So these business cards that were found</p> <p>19 in North Star's files could have been given at</p> <p>20 any time since the inception of North Star to</p> <p>21 present, correct?</p> <p>22 MR. SEWRIGHT: Objection; form of the</p> <p>23 question.</p> <p>24 BY MS. HO:</p> <p>25 Q Mr. Bentz.</p> |

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1 A I don't know who or when these business
2 cards were actually received, if they in fact are
3 even business cards.

4 Q Okay. Now, looking at this particular
5 document and the copy of the business cards by
6 Mr. Randolph, did anyone at North Star ask
7 Mr. Randolph which company he was working for
8 during the Homer Spit project?

9 A I don't know.

10 Q Did you ask Mr. Randolph?

11 A I don't recall if I did or not.

12 Q Okay. To your understanding, what role
13 did Mr. Randolph play in the Homer Spit project?

14 A I can't attest to what his entire role
15 was. We were taking directions from Randy
16 Randolph.

17 MS. HO: Objection; move to strike;
18 nonresponsive.

19 MR. SEWRIGHT: That's not --
20 BY MS. HO:

21 Q Now, Mr. Bentz, I asked you if you know
22 what role Mr. Randolph played and you said --

23 A I'm sorry. Could you rephrase?

24 Q I asked you what role, to your
25 knowledge, Mr. Randolph played.

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1 MR. SEWRIGHT: And he said they took
2 directions from him.

3 MS. HO: Took directions from whom?

4 MR. SEWRIGHT: From Mr. Randolph.

5 A From Randy Randolph.

6 MR. SEWRIGHT: That's a role.

7 BY MS. HO:

8 Q That's a role?

9 A Yes.

10 Q Did you personally take directions from
11 Mr. Randolph?

12 A No.

13 Q Who do you know at North Star that took
14 directions from Mr. Randolph?

15 A That used to work for North Star, Jack
16 Goodwill.

17 Q Jack Goodwill. But he's no longer with
18 the company; is that true?

19 A That's correct.

20 Q Do you have a current business address
21 and contact information for Mr. Goodwill?

22 A I told you he still lives in Seward, to
23 the best of my knowledge.

24 Q Okay. But do you have an exact address
25 for him, sir?

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1 A I believe he's still in the same house.

2 I believe he still lives in the same house in
3 Seward.

4 Q In Seward.

5 MR. SEWRIGHT: We gave you his address,
6 Counsel.

7 MS. HO: Okay. I'll look through the
8 file and ascertain that.

9 Q We can get to Mr. Randolph's role here.

10 Now, you're claiming that Mr. Randolph gave
11 directions. Do you have any specific time period
12 you're referring to? Any specific instance?

13 A I can't tell you the exact dates, but I
14 know that Mr. Randolph was the one directing
15 Mr. Goodwill as to when to load the rock and when
16 to call the crew for and that sort of thing.

17 Q Any specific instance that you know of
18 that would indicate this allegation?

19 MR. SEWRIGHT: Object to the form of
20 the question.

21 BY MS. HO:

22 Q Sir, you've testified that --

23 A Well, what exactly is your question?

24 Q You're claiming that Mr. Randolph had
25 control over Mr. Goodwill. Do you have any

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1 specific instance you're referring to, sir?

2 A The days that we were -- the days prior
3 to or the days of loading the barges are the
4 times when he was the one directing our company
5 when to start work and what to load.

6 Q When to start work and when to load.
7 Well, do you have any specific time and dates for
8 those?

9 A I don't personally have the specific
10 times and dates logged in my memory, no. It was
11 eight years ago.

12 Q Correct. And Mr. Goodwill is no longer
13 with the company.

14 A He's readily available in Seward.

15 Q He's readily available.

16 A Yes.

17 Q Okay. Well, we'll get to that
18 allegation in a moment here.

19 MR. SEWRIGHT: What? That he's readily
20 available?

21 MS. HO: No, your allegation that
22 Mr. LaPore was in control.

23 Q Let's look at North Star's Amended
24 Complaint. Mr. Bentz, please take a few moments
25 to read this document.

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| <p style="text-align: right;">Page 70</p> <p>1 (Exhibit 5 marked.)</p> <p>2 MR. VIERGUTZ: Can we go off record</p> <p>3 just a second?</p> <p>4 MS. HO: Sure.</p> <p>5 (Short break taken.)</p> <p>6 BY MS. HO:</p> <p>7 Q Okay. We've just taken a break and</p> <p>8 we're back on record here.</p> <p>9 Before I get to North Star's Third</p> <p>10 Amended Complaint, let me --</p> <p>11 MR. SEWRIGHT: The what Amended</p> <p>12 Complaint?</p> <p>13 A You want me to quit reviewing this?</p> <p>14 BY MS. HO:</p> <p>15 Q Did you get a chance to look at the</p> <p>16 document?</p> <p>17 A Not in total yet, no.</p> <p>18 Q Okay. Well, why don't you finish</p> <p>19 reviewing that.</p> <p>20 MR. SEWRIGHT: Did you say Third</p> <p>21 Amended Complaint or did I mishear?</p> <p>22 MS. HO: Let me correct. North Star's</p> <p>23 Amended Complaint dated on or about August 31st,</p> <p>24 2005.</p> <p>25 MR. SEWRIGHT: Right.</p> | <p style="text-align: right;">Page 72</p> <p>1 Q And anybody else at North Star that you</p> <p>2 know of that had discussions --</p> <p>3 A Not on this Amended Complaint. Not</p> <p>4 that I know of.</p> <p>5 Q Okay. So it was just basically you and</p> <p>6 your counsel?</p> <p>7 A Yes.</p> <p>8 MR. SEWRIGHT: And several boxes of</p> <p>9 pleadings given this year and everything that's</p> <p>10 developed in this case, including two summary</p> <p>11 judgments and two appeals.</p> <p>12 MS. HO: Okay. I'll get back to it in</p> <p>13 a moment.</p> <p>14 Q Let me introduce Exhibit No. 6 to you.</p> <p>15 Take a moment to look through that document,</p> <p>16 which was produced by your counsel last Thursday.</p> <p>17 MR. SEWRIGHT: Actually, Counsel, I</p> <p>18 think this was first produced about eight years</p> <p>19 ago.</p> <p>20 MS. HO: Well, my first time of seeing</p> <p>21 this document was in your office last Thursday.</p> <p>22 It might have been produced earlier.</p> <p>23 MR. SEWRIGHT: And for the record, it's</p> <p>24 a collection of documents. Exhibit 6 is a</p> <p>25 collection of documents.</p> |
| <p style="text-align: right;">Page 71</p> <p>1 MS. HO: Okay. Off record a minute.</p> <p>2 (Short break taken.)</p> <p>3 (Exhibit 6 marked.)</p> <p>4 BY MS. HO:</p> <p>5 Q Mr. Bentz, you've just taken a few</p> <p>6 moments to review what has been marked as</p> <p>7 Defendants' Exhibit No. 4.</p> <p>8 Do you recognize this document?</p> <p>9 A Actually I believe it's Exhibit No. 5.</p> <p>10 Q That's right, Exhibit 5.</p> <p>11 Do you recognize this document, sir?</p> <p>12 A I just reviewed it.</p> <p>13 Q Is it North Star's Amended Complaint</p> <p>14 dated on or about August 31st, 2005? The date is</p> <p>15 noted on page 25 of 26.</p> <p>16 A Yes.</p> <p>17 Q Okay. And as you were reviewing</p> <p>18 through this document, do you recall whether or</p> <p>19 not you had any input into the drafting of this</p> <p>20 document?</p> <p>21 A Not all the legalese, no.</p> <p>22 Q But just the general facts surrounding</p> <p>23 the claims?</p> <p>24 A Yes, Mike and I talked about the facts</p> <p>25 surrounding the claims.</p> | <p style="text-align: right;">Page 73</p> <p>1 BY MS. HO:</p> <p>2 Q It has nine pages, Mr. Bentz. If you</p> <p>3 would go through the document and count how many</p> <p>4 pages you have on this particular Exhibit No. 6.</p> <p>5 MR. SEWRIGHT: She's asking you to</p> <p>6 count the pages, Jeff.</p> <p>7 BY MS. HO:</p> <p>8 Q Do you have nine pages?</p> <p>9 A I have nine pages.</p> <p>10 Q Do you recognize this nine-page</p> <p>11 document?</p> <p>12 A I haven't reviewed them yet. You asked</p> <p>13 me to count them.</p> <p>14 Q Okay. Go ahead and look at them.</p> <p>15 Have you had a chance to look through</p> <p>16 this nine-page document?</p> <p>17 A Yes.</p> <p>18 Q Looking on the first page, do you see</p> <p>19 the title North Star Terminal & Stevedore</p> <p>20 Company?</p> <p>21 A Uh-huh.</p> <p>22 Q Is that a company logo for North Star</p> <p>23 back in 1997?</p> <p>24 A Very well probably was.</p> <p>25 Q Okay. Is this logo currently used by</p> |

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| <p style="text-align: right;">Page 74</p> <p>1 North Star?</p> <p>2 A Something different, slightly different</p> <p>3 from that.</p> <p>4 Q But do you dispute that this is a North</p> <p>5 Star Terminal and Stevedore Company document, at</p> <p>6 least produced from your files?</p> <p>7 A No, I don't dispute that.</p> <p>8 MR. SEWRIGHT: Counsel, what's the</p> <p>9 logo? The star?</p> <p>10 BY MS. HO:</p> <p>11 Q It looks like it's a star. Do you</p> <p>12 agree, Mr. Bentz?</p> <p>13 A Looks like a star with five points on</p> <p>14 it.</p> <p>15 Q And it's dated January 27, 1997,</p> <p>16 correct?</p> <p>17 A Uh-huh.</p> <p>18 Q And do you see the name G. Meherg,</p> <p>19 M-e-h-e-r-g, credit manager?</p> <p>20 A Uh-huh.</p> <p>21 Q Is Mr. Meherg still with North Star?</p> <p>22 A It's a Ms. and, no, she's not. She's</p> <p>23 retired.</p> <p>24 Q She's retired. Is she back in 1997 the</p> <p>25 person who handled this type of -- what looks</p> | <p style="text-align: right;">Page 76</p> <p>1 agree, then, that this is a document that was</p> <p>2 produced by North Star?</p> <p>3 A It could have been produced by North</p> <p>4 Star, yes.</p> <p>5 Q Do you see the line that says</p> <p>6 "Confidential Credit Application, Commercial</p> <p>7 Accounts," on the top right underneath the logo?</p> <p>8 A Yes, I see that.</p> <p>9 Q Is it North Star's practice to have its</p> <p>10 credit applications confidential, meaning that</p> <p>11 the information provided by the applicant is not</p> <p>12 disclosed to third parties?</p> <p>13 A Yeah. We wouldn't do that.</p> <p>14 Q Okay. What is North Star's custom and</p> <p>15 practice in extending lines of credit to the</p> <p>16 business customers?</p> <p>17 A You asked that in the first hour, and I</p> <p>18 told you that it really depends on the customer.</p> <p>19 It's a very tight-knit market. So sometimes,</p> <p>20 yes, because we haven't done business with them,</p> <p>21 and sometimes, no, because they've got a good</p> <p>22 reputation in the marketplace.</p> <p>23 Q Appreciate the clarification. Does</p> <p>24 North Star solicit the customer in making credit</p> <p>25 available?</p> |
| <p style="text-align: right;">Page 75</p> <p>1 like a commercial credit application? At least</p> <p>2 the first sentence, "Dear Valued Customer:</p> <p>3 Enclosed you will find our new commercial credit</p> <p>4 application."</p> <p>5 A She probably would have. That would</p> <p>6 have been one of her responsibilities then.</p> <p>7 Q Currently, is there a credit manager</p> <p>8 within North Star?</p> <p>9 A We don't really have credit managers</p> <p>10 per se, no.</p> <p>11 Q Now, if you'll please turn to page 2 of</p> <p>12 this nine-page document. Do you recognize the</p> <p>13 North Star Terminal and Stevedore Company title</p> <p>14 listed on the top there?</p> <p>15 A Yes.</p> <p>16 Q And you also see the star company logo?</p> <p>17 A Yes.</p> <p>18 Q And do you dispute that this is a</p> <p>19 document that is not from North Star's files?</p> <p>20 MR. SEWRIGHT: Objection; form of the</p> <p>21 question.</p> <p>22 A You said it's a document not from North</p> <p>23 Star's files; that doesn't make any sense.</p> <p>24 BY MS. HO:</p> <p>25 Q Let's rephrase that, then. Do you</p> | <p style="text-align: right;">Page 77</p> <p>1 A Could you ask that question again?</p> <p>2 Q Does North Star actively solicit --</p> <p>3 some car companies, for example, if I'm</p> <p>4 interested in purchasing a car, sometimes they'll</p> <p>5 ask, do you need a line of credit? So, at least</p> <p>6 from my perspective, the car company is</p> <p>7 soliciting me.</p> <p>8 Does North Star do that in its business</p> <p>9 with its potential customers?</p> <p>10 MR. SEWRIGHT: Object to the form of</p> <p>11 the question.</p> <p>12 BY MS. HO:</p> <p>13 Q Mr. Bentz, do you understand the</p> <p>14 question?</p> <p>15 A No, it's not a very well-asked</p> <p>16 question, I don't believe.</p> <p>17 Q Then, I'll ask you again, Mr. Bentz:</p> <p>18 Does North Star solicit its potential customers</p> <p>19 regarding extending a line of business -- line of</p> <p>20 credit?</p> <p>21 MR. SEWRIGHT: Same objection.</p> <p>22 A It's still not a properly posed</p> <p>23 question.</p> <p>24 BY MS. HO:</p> <p>25 Q It's a very simple question. It's not</p> |

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| <p style="text-align: right;">Page 78</p> <p>1 rocket science.</p> <p>2 A Do we solicit our customers to grant</p> <p>3 them credit?</p> <p>4 Q Well, yes. I mean, do you say, okay,</p> <p>5 our company has lines of credit which we can</p> <p>6 grant to a business?</p> <p>7 A We don't grant lines of credit.</p> <p>8 Q Do you solicit them?</p> <p>9 A We don't solicit lines of credit.</p> <p>10 Q Okay. Then, do potential customers</p> <p>11 reveal to you that they might have a financial</p> <p>12 difficulty in working with North Star and do</p> <p>13 they, these potential customers, ask North Star,</p> <p>14 do you have any way of assisting us so that we</p> <p>15 can consummate this agreement to work with North</p> <p>16 Star?</p> <p>17 MR. SEWRIGHT: Objection to form of the</p> <p>18 question.</p> <p>19 A That's not our general way of doing</p> <p>20 business as you have posed the question.</p> <p>21 BY MS. HO:</p> <p>22 Q Then how does North Star generally do</p> <p>23 this business regarding its commercial accounts</p> <p>24 and credit applications?</p> <p>25 A Most of our customers have been</p> | <p style="text-align: right;">Page 80</p> <p>1 that Mr. Bentz is reading what I am.</p> <p>2 Q Mr. Bentz, paragraph 3, would you</p> <p>3 please read that aloud for the record?</p> <p>4 A Well, I don't have my reading glasses</p> <p>5 with me and this is fairly illegible. But,</p> <p>6 "Applicant agrees to notify North Star Terminal &</p> <p>7 Stevedore Company promptly of any changes in</p> <p>8 ownership of the business conducted under the</p> <p>9 account name and agrees to liability for all</p> <p>10 charges to the business conducted under the</p> <p>11 account name unless and until North Star Terminal</p> <p>12 reviews written notice of a change in ownership</p> <p>13 of that business."</p> <p>14 Q And then it looks like Mr. LaPore has</p> <p>15 signed that agreement. Was there any dispute by</p> <p>16 North Star that this particular agreement signed</p> <p>17 by Mr. LaPore was unacceptable to North Star?</p> <p>18 A Not that I know of.</p> <p>19 Q Now, during the time that Mr. LaPore</p> <p>20 and Spencer Rocks had a business engagement with</p> <p>21 North Star, did Mr. LaPore or anyone at Spencer</p> <p>22 Rocks notify North Star that there was an</p> <p>23 ownership of business?</p> <p>24 MR. SEWRIGHT: Object to the form of</p> <p>25 the question.</p> |
| <p style="text-align: right;">Page 79</p> <p>1 long-time customers of North Star. When we come</p> <p>2 across a new business, depending on the volume of</p> <p>3 business, the length and duration of the</p> <p>4 business, the type of business, whether or not</p> <p>5 it's a federally-funded project, a bondable</p> <p>6 project, not bonded project, we may or may not do</p> <p>7 any number of variety of different ways to try to</p> <p>8 secure our future.</p> <p>9 Q Thank you, Mr. Bentz. That's what I</p> <p>10 needed clarification on.</p> <p>11 If you would please turn to page 4 of</p> <p>12 this nine-page document. It says Agreement on</p> <p>13 top. And it looks to be Spencer Rock Products</p> <p>14 and a signature of what looks to be Robert LaPore</p> <p>15 and what looks to be dated January 28th, 1997.</p> <p>16 Do you disagree with what's stated on</p> <p>17 this agreement?</p> <p>18 A Do I disagree with what's stated on the</p> <p>19 agreement?</p> <p>20 Q In terms of what I've just noted. The</p> <p>21 company name, the signature and the date.</p> <p>22 A Yes, that's right.</p> <p>23 MR. SEWRIGHT: Objection. Counsel, the</p> <p>24 document speaks for itself.</p> <p>25 MS. HO: Well, I just want to be sure</p> | <p style="text-align: right;">Page 81</p> <p>1 BY MS. HO:</p> <p>2 Q Mr. Bentz?</p> <p>3 A Did anybody notify us of ownership of</p> <p>4 Spencer?</p> <p>5 Q No. Did anyone -- first, did</p> <p>6 Mr. LaPore notify you --</p> <p>7 A Hold on just a second. Could you</p> <p>8 reread the question back to me that she asked?</p> <p>9 (Question read by the reporter.)</p> <p>10 BY MS. HO:</p> <p>11 Q Let me rephrase that.</p> <p>12 A Doesn't make any sense.</p> <p>13 Q The question is: First, did Mr. LaPore</p> <p>14 at any time notify North Star that Spencer Rocks,</p> <p>15 Incorporated had a change of ownership in terms</p> <p>16 of its business?</p> <p>17 A Define "change in ownership."</p> <p>18 Q Well, you tell me. When North Star</p> <p>19 became doing business as a limited liability</p> <p>20 company, didn't it have to go through legal steps</p> <p>21 to make sure that the form of the entity was --</p> <p>22 A There are some customers, some people</p> <p>23 that we had contracts with that we had to notify.</p> <p>24 We didn't have to notify a lot of people.</p> <p>25 Q Right. And in this case with Spencer</p> |

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| <p style="text-align: right;">Page 82</p> <p>1 Rock Products, did anyone from Spencer Rock 2 Products notify North Star that it had any change 3 of ownership? 4 A I don't know. 5 Q Did Mr. LaPore notify North Star that 6 Spencer Rock had any change of business 7 ownership? 8 A Ownership or practice? 9 Q Ownership. 10 A I don't know. 11 Q So to your knowledge and to North 12 Star's knowledge, Spencer Rock operated as 13 Spencer Rock; nobody took over their business, 14 nobody assumed their business, correct? 15 MR. SEWRIGHT: Objection to the form of 16 the question. 17 A That's not what you asked. You just 18 asked a separate question. 19 BY MS. HO: 20 Q To your knowledge, then, does North 21 Star have any information that would indicate 22 that Spencer Rock operated under a different 23 company name? That's the first question. 24 A I don't know if they operated under a 25 different company name or not.</p> | <p style="text-align: right;">Page 84</p> <p>1 to be liable to North Star for its charges? 2 MR. SEWRIGHT: Same objection. 3 A This agreement says that Robert LaPore 4 while we were working for Spencer is supposed to 5 pay us on time. 6 Q Right. So it was Mr. LaPore and/or 7 Spencer Rock who was liable for those charges 8 while North Star was working for Spencer Rock and 9 LaPore? 10 MR. SEWRIGHT: Same objection; also 11 calls for a legal conclusion. 12 BY MS. HO: 13 Q Mr. Bentz? 14 A Yes. 15 Q Wouldn't you agree that it was 16 Mr. LaPore, and when he signed this agreement 17 with North Star that it was Mr. LaPore on behalf 18 of Spencer Rock Products, that he would be the 19 one liable to North Star? 20 MR. SEWRIGHT: Continuing objection. 21 BY MS. HO: 22 Q Mr. Bentz, it's not rocket science 23 here. 24 A Are you calling me stupid? 25 Q No, I'm not calling you stupid.</p> |
| <p style="text-align: right;">Page 83</p> <p>1 Q And the second question to that is: 2 Does North Star or do you know whether or not 3 anybody else at Spencer Rock notified North Star 4 that it ever had any change of its ownership of 5 that business within Spencer Rocks? 6 A I don't know of any notification it 7 received explaining any legal ownership changes 8 with Spencer Rock. 9 Q Okay. Now, you've just read paragraph 10 3, and according to that paragraph, then, isn't 11 it true that Spencer Rock Products, Incorporated 12 agreed to be liable for North Star's charges on 13 this account? 14 MR. SEWRIGHT: Object to the form of 15 the question. 16 BY MS. HO: 17 Q Well, it says here, paragraph 3 that, 18 Applicant agrees to notify North Star promptly of 19 any changes in ownership in the business 20 conducted and agrees to liability to all charges 21 for the business conducted under the account 22 name. 23 So, by virtue of this particular 24 agreement by Mr. LaPore and Spencer Rock, isn't 25 it true that Mr. LaPore and Spencer Rock agreed</p> | <p style="text-align: right;">Page 85</p> <p>1 A Why don't you rephrase the question? 2 Q Okay. Then, why don't you turn to page 3 9 of this Exhibit No. 6. 4 A The last page? 5 Q Yes, sir. 6 A Go ahead. 7 Q Now, could you read for the record what 8 the document states in terms of the title? 9 A It says, Individual Personal Guarantee. 10 Q Okay. And then could you read the 11 first paragraph? 12 A Well, it's titled "To: North Star 13 terminal and Stevedore Company," and then it 14 says, "In consideration" -- I can't read it. 15 Sorry about that. 16 MR. SEWRIGHT: Let the record reflect 17 Counsel handed Mr. Bentz a cheap pair of reading 18 glasses, which may or may not help. 19 A "In consideration of extension of 20 credit to applicant, and/or forbearance from 21 immediate collection of any existing indebtedness 22 to you, I/we hereby unconditionally guarantee, 23 jointly and severally, punctual payment and 24 performance of all applicant's obligations, 25 present and future, to North Star Terminal and</p> |

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| <p style="text-align: right;">Page 86</p> <p>1 Stevedore Company."</p> <p>2 BY MS. HO:</p> <p>3 Q And it's dated January 28th, 1997; is</p> <p>4 that correct?</p> <p>5 A That appears to be the date.</p> <p>6 Q And it appears that Mr. LaPore has</p> <p>7 signed this individual personal guarantee?</p> <p>8 A It happens that he did.</p> <p>9 Q At any time did North Star dispute this</p> <p>10 particular individual personal guarantee signed</p> <p>11 by Mr. LaPore?</p> <p>12 A Did we dispute the document?</p> <p>13 Q Yeah.</p> <p>14 A Not to the best of my knowledge.</p> <p>15 Q Did you ever -- strike that.</p> <p>16 Now, according to this particular</p> <p>17 individual personal guarantee that was signed by</p> <p>18 LaPore, then isn't it true that Mr. LaPore agreed</p> <p>19 to be personally liable for all of North Star</p> <p>20 charges on the Homer Spit account?</p> <p>21 A It appears that at that date he agreed</p> <p>22 to those conditions.</p> <p>23 Q Was there any modifications of this</p> <p>24 particular guarantee that you or North Star knows</p> <p>25 of?</p> | <p style="text-align: right;">Page 88</p> <p>1 rights against Mr. LaPore and Spencer Rocks?</p> <p>2 MR. SEWRIGHT: Objection; form of</p> <p>3 question; calls for legal conclusion.</p> <p>4 BY MS. HO:</p> <p>5 Q In layman's terms, is North Star still</p> <p>6 chasing after Mr. LaPore and/or Spencer Rocks?</p> <p>7 A We're still looking to get paid what's</p> <p>8 due us on the job.</p> <p>9 Q And you're looking also to Mr. LaPore</p> <p>10 and/or Spencer Rocks?</p> <p>11 A Certainly we have.</p> <p>12 Q Now, isn't it true that according to</p> <p>13 page 2 of this nine-page document, it says</p> <p>14 Confidential Credit Application, and essentially</p> <p>15 these types of credit applications are not</p> <p>16 disclosed to third parties, including my clients,</p> <p>17 USF&G and Nugget Construction; is that correct?</p> <p>18 A Ordinarily I don't believe we share the</p> <p>19 documents.</p> <p>20 MR. SEWRIGHT: Are you saying, Counsel,</p> <p>21 that we should have had a confidentiality</p> <p>22 stipulation before this was produced?</p> <p>23 MS. HO: No, I'm not saying that.</p> <p>24 MR. SEWRIGHT: You may be right. Maybe</p> <p>25 we should enter into that pretty soon.</p> |
| <p style="text-align: right;">Page 87</p> <p>1 A Not to this document that I know of.</p> <p>2 Q Any oral representations by either</p> <p>3 North Star or LaPore that would render this</p> <p>4 guarantee null and void?</p> <p>5 A I don't know. I'm not sure how the law</p> <p>6 would view whether or not this was null and void</p> <p>7 pending what actually took place in this case.</p> <p>8 Q I'm not asking you for legal</p> <p>9 conclusions. I'm asking if there are any facts</p> <p>10 or any conversations, any meetings between anyone</p> <p>11 at North Star, including yourself and Mr. LaPore,</p> <p>12 that would dispute this personal guarantee?</p> <p>13 A I don't know of anything that would</p> <p>14 dispute the document.</p> <p>15 Q To your understanding are there any</p> <p>16 other incidents that might have occurred during</p> <p>17 these years of litigation that might have</p> <p>18 rendered the guarantee unenforceable?</p> <p>19 A I might need to know something else,</p> <p>20 some more knowledge about the law to know that.</p> <p>21 I mean, given everything that's taken place in</p> <p>22 this particular set of circumstances, I don't</p> <p>23 know whether this is still a legally binding</p> <p>24 document or not.</p> <p>25 Q Is North Star continuing to enforce its</p> | <p style="text-align: right;">Page 89</p> <p>1 MS. HO: We can discuss that.</p> <p>2 Q Back on January 27, 1997 the intent of</p> <p>3 this particular nine-page credit application was</p> <p>4 the information contained was confidential and</p> <p>5 nobody but North Star and Spencer Rocks and/or</p> <p>6 Mr. LaPore were privy to the information that was</p> <p>7 provided, correct?</p> <p>8 A Not that I know of.</p> <p>9 Q Okay. Thank you. Let's talk about the</p> <p>10 actual agreement that North Star had loading rock</p> <p>11 on the Homer Spit project.</p> <p>12 Who did North Star contact to discuss</p> <p>13 the project initially? Do you know, or do you</p> <p>14 know of anybody at North Star who would know that</p> <p>15 information?</p> <p>16 MR. SEWRIGHT: Object to the form.</p> <p>17 A I don't know who the first contact was</p> <p>18 made through or by.</p> <p>19 BY MS. HO:</p> <p>20 Q Okay.</p> <p>21 A In other words, I don't know if it was</p> <p>22 Randy that talked to Jack or if it was Spencer or</p> <p>23 LaPore that talked to Jack first. I'm not</p> <p>24 certain.</p> <p>25 (Exhibit 7 marked.)</p> |

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1 BY MS. HO:
2 Q Mr. Bentz, please take a few moments to
3 review what is marked as Defendants' Exhibit No.
4 7.
5 We can go off the record.
6 (Short break taken.)
7 BY MS. HO:
8 Q Mr. Bentz, did you take a few moments
9 to review what is marked as Defendants' Exhibit
10 No. 7?
11 A Yes.
12 Q And do you recognize this document?
13 A I think I've seen it before.
14 Q It is the Affidavit of Mr. Jack
15 Goodwill dated on or about December blank 1998.
16 That's page 6.
17 MR. SEWRIGHT: It's about December 7,
18 Counsel, if you see the postmark -- or I don't
19 know what that is. The Postmaster served as the
20 Notary Public, the Postmaster of Seward, Alaska,
21 December 7th.
22 MS. HO: Okay. Thank you for that
23 clarification.
24 Q And all the attaching exhibits to
25 Mr. Goodwill's affidavit; do you agree with that,

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1 Mr. Bentz?
2 A Do I agree they're attached?
3 Q Yes.
4 A Yeah.
5 Q Now, I want to have you turn your
6 attention to page 2, paragraph 3. You can read
7 that to yourself or you're welcome to read it
8 aloud for the record.
9 A I see that.
10 Q Now, after reading that paragraph, do
11 you have any recollection or knowledge of who
12 contacted whom with respect to the initialization
13 of the Homer Spit project between North Star and
14 Spencer Rock?
15 A No, I don't.
16 MR. SEWRIGHT: Object to the form.
17 A No, I don't. I know that it appears
18 that Mr. LaPore contacted Mr. Goodwill in August
19 of '96.
20 BY MS. HO:
21 Q August of '96. Okay. And then
22 essentially what Mr. Goodwill is testifying in
23 this affidavit in paragraph 3, it looks like the
24 sentence before the last, he said he wanted us --
25 "he" referring to Mr. LaPore -- would you

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1 disagree with that -- to load the stone onto a
2 barge the next year?
3 A It appears in August of '96 that
4 Mr. LaPore contacted Jack Goodwill inquiring
5 about potentially having us do some work for him.
6 Q Right. And then would you please read
7 paragraph 4 to yourself?
8 A Okay.
9 Q Okay. And it appears, then,
10 Mr. Goodwill, according to paragraph No. 4, had
11 indicated Mr. LaPore informed him that Nugget had
12 obtained the award from the federal government on
13 this contract and that it would be Spencer Rock
14 Products who would be supplying the rock,
15 correct?
16 A That's what this says, yes.
17 Q And then Mr. Goodwill also testified in
18 paragraph 4 that it was orally agreed that
19 Northern Stevedoring was to bill Spencer Rock for
20 the loading based on the labor and equipment used
21 and a time and material basis.
22 Is that correct, Mr. Bentz?
23 A That's what this says.
24 Q Okay. Then, as a consequence on
25 January 29th, 1997 Spencer Rock agreed to the

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1 credit terms with North Star Terminal and
2 Stevedore Company doing business as Northern
3 Stevedoring; is that correct?
4 A That's what it says.
5 Q Okay. I'm going to submit another
6 document as an exhibit.
7 (Exhibit 8 marked.)
8 BY MS. HO:
9 Q I'll give you a moment to look at that.
10 A Go ahead.
11 Q Okay. Please note for the record that
12 while we had this moment for Mr. Bentz to review
13 the document that his counsel was speaking with
14 him.
15 Now, on this Exhibit No. 8 --
16 MR. SEWRIGHT: Counsel, we were off the
17 record, weren't we?
18 MS. HO: We were on the record.
19 MR. SEWRIGHT: I thought you said off
20 the record while he was -- I thought we were off
21 the record. Were we off the record or not?
22 THE REPORTER: No.
23 MR. SEWRIGHT: This on and off the
24 record is a tricky business here.
25 BY MS. HO:

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1 Q For that matter, as we move on with the
2 deposition and we're looking at Defendants'
3 Exhibit No. 8 -- would you count the number of
4 pages that you have in your hand?

5 A Appears to be nine.

6 Q This nine-page document in Exhibit No.
7 8, the first page it says Northern Stevedore &
8 Handling Corporation, Box 497, Seward, Alaska
9 99664. Do you recognize -- is that a
10 company -- is that North Star?

11 A This was a Northern -- looks like
12 Northern letterhead or something back then.

13 Q And do you recognize the forklift truck
14 picture? Is that one of the logos that North
15 Star used to have?

16 A Yeah, it might have been.

17 Q And do you see the title Current Rates
18 for Labor & Equipment 1996, Effective 1/97?

19 A Uh-huh.

20 Q Now, are these the rates that were
21 established by North Star back in 1997?

22 A This might have been a rate sheet for a
23 particular type of equipment rental --

24 Q Okay. Now, it says --

25 A -- and labor.

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1 Q Paragraph I, Labor Rates and Paragraph
2 II, Equipment Rates.

3 A Uh-huh.

4 Q To your knowledge, was this the rate
5 sheet that was used in the Homer Spit project?

6 A This may have been the rate sheet -- it
7 appears that this is our published rates, if you
8 will, back at that particular point in time. I
9 would have to verify the numbers to make sure,
10 but...

11 Q Who would be responsible for coming up
12 with these rates?

13 A I would.

14 Q And what basis do you have for these
15 rates in terms of, do you look at other
16 publications or industry standards?

17 A Yeah, the rental rates for the
18 equipment we generally would have used blue book
19 or something of that nature and then we would
20 have modified it for Alaska. It's slightly
21 higher.

22 Q And usually -- or in North Star's
23 custom and practice, are these rates based on a
24 time and material?

25 A We do a variety of different types of

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1 invoicing depending on what the job is.

2 Q Particularly to this Homer Spit
3 project, what was your knowledge or North Star's
4 knowledge as to how these rates were applied?

5 A Time and materials.

6 Q Now, if you look at Paragraph I, it
7 says Labor Rates and then Job Description, and
8 this is on page 1 of the document.

9 S/T, what does that stand for?

10 A The S/T?

11 Q Yes.

12 A That would stand for straight time.

13 Q What would that mean?

14 A That would be the hours between 8:00
15 and 3:00; in other words, 8:00 to noon and 1:00
16 to 3:00, Monday through Friday, on that
17 particular labor contract.

18 Q And do you have any particular rate
19 sheets for the weekends?

20 A No, it doesn't work like that.

21 Q Now, what about the O/T, what does that
22 stand for?

23 A That would be overtime.

24 Q And that's also Monday through Friday?

25 A No. Overtime would be anything outside

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1 of the original hours that I told you that were
2 not considered to be penalty time or triple time
3 or early start time or any number of other
4 particular categories.

5 Q Now, overtime can mean weekends, work
6 by stevedores that would fall over the weekends?

7 A Could be on the weekend; could be in
8 the evening.

9 Q And penalty O/T, that's penalty
10 overtime?

11 A Yes.

12 Q Can you explain that term, please?

13 A How much time do you have? The labor
14 contract is fairly complicated for penalty
15 overtime hours. If you worked them too many
16 hours before giving them a break, if you worked
17 through a meal hour, worked after midnight, if
18 you worked after 15 hours, any number of things
19 could trigger that.

20 Q And you just mentioned about triple
21 time, and that's not stated on this particular
22 document?

23 A No.

24 Q Triple overtime wasn't used back in
25 1997 to your knowledge?